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COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

Final Report Volume I

LEGACY OF HOPE: AN AGENDA FOR CHANGE

LEGACY OF HOPE:

AN AGENDA FOR CHANGE

Volume I

FINAL REPORT FROM THE COMMISSION ON FIRST NATIONS AND MÉTIS PEOPLES AND JUSTICE REFORM

WWW.JUSTICEREFORMCOMM.SK.CA

JUNE 21, 2004

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EXECUTIVE SUMMARY

When the Commission on First Nations and Metis Peoples and Justice Reform was established in November of 2002, it was given a broad mandate. The Terms of Reference directed the Commission to "include in its scope of consideration all components of the criminal justice system including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services."

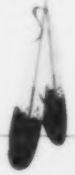
As the Commission began its work it became obvious that justice and all that term evokes is much more than policing, courts and the myriad of institutions that have been developed. The Commissioners learned that the issues facing First Nations and Metis people – and the reasons they come into conflict with the justice system - are rooted in failures in the areas of education, health and economic development. Therefore, it is logical that the solutions to the problems of First Nations and Metis communities will be found by examining a wide range of areas. It was with this desire to address the issue of First Nations and Metis people and the justice system from a holistic point of view that the Commission undertook its mandate.

This report reflects the Commission's work in what it identified as eight critical areas. These areas include: Leadership, Community Promotion and Crime Prevention, Victimization and Violence, Restorative Justice, Policing, Justice Institutions, Racism and Children and Youth.

Much has been written about the negative aspects of First Nations and Metis people and the justice system; high incarceration rates, high crime rates, conflict with police, and a growing concern about the future of Aboriginal young people. This Commission acknowledges that the status quo is not acceptable. Change is necessary. The report contains a paper developed by University of Saskatchewan professors Isobel Findlay and Warren Weir. This document, *Aboriginal Justice in Saskatchewan 2002 – 2021: The Benefits of Change*, clearly demonstrates the positive changes that will occur once reforms in the areas of restorative justice, education and economic development are implemented.

An important concern of this Commission has been the need to ensure that its work will be taken seriously and that recommendations it has presented will be implemented. As directed in the Terms of Reference, the Commission outlines in this report short and long-term implementation strategies.

This report is presented to the people of Saskatchewan with the sincere hope that it will provide assistance in returning the responsibility for justice to the community.



VISION

One Community – working together to create a healthy,

just, prosperous and safe Saskatchewan

Meyo Wahkotowin

Dene Araya Who Teeya Al Then

MISSION STATEMENT

To create change and make a difference by:

- Listening to people
- Building relationships
- Promoting respect and change
- Recognizing successes, and
- Making recommendations for future justice reform

MESSAGE FROM THE CHAIR

First, I sincerely thank everyone who participated in the work of this Commission. You responded to our challenges with honour and dignity that enriched us all. I believe, with your helpful support and valuable input, we have fulfilled our Terms of Reference and Mandate. Now our words must be put into action. Our mission to create change and make a difference will only be realized by disciplined and lasting action. We must all act on the vision of one community – Champions for Change, working together in respectful ways.

When we began our work, we suggested meaningful change would require positive relationships, working partnerships and shared responsibilities. You added that they should be based on First Nations and Metis traditions and values. The themes that emerged, building on our strengths, focusing on youth and working together, are the common elements of everyone's success. Acting on these themes will leave a legacy of hope. The solutions that you suggested for reform in our community discussions are wide-ranging. They take everyone into account and are concerned with cultural issues, spirituality and respect.

As chairperson, I had the honour to observe the outstanding work you do. I believe with the current circumstances Saskatchewan has the best opportunity to lead in improving the way of life of First Nations and Metis peoples. *Nitotaymitik!* We must do our share. The goal is that in a decade, the benefits of change will make Saskatchewan the best province in Canada. No more frozen bodies. Instead, a collective celebration of life. Where there is hatred, love. No more violence or any form of abuse. Where there is injury, pardon. No more of our youth taking their own lives. Instead, where there is despair, hope and choosing to live fully our blessings. Where there is doubt, faith.

We have listed eight important areas where reform must take place in a way that allows individuals and communities to take on responsibility and support each other. In my Cree language – *Opintowin* – means lifting each other up. World standards, where they are higher, should be our goal in creating safer communities, especially for our children. The plan for change paints a picture full of hope of a better future. Again, it requires action, making us all Champions for Change. The different way we propose is to return justice to the community. The Elders remind us we are truly one in Spirit and there we together hold all the fundamentals of success.

The Centennial year of 2005 offers us an opportunity to reflect on this new path and celebrate change. Perhaps it is time for a new Treaty in Saskatchewan, a Friendship Treaty among all the peoples of the province, calling for change and a plan of action to ensure our collective vision is put into practice. And then, legislation by all four partners that makes this new relationship official. A partnership in action.

W. Littlechild

MEET THE COMMISSIONERS

Members of the Commission on First Nations and Métis Peoples and Justice Reform. From left to right: Glenda Cooney, Joe Quewezance, Irene Fraser, J. Wilton Littlechild and Hugh Harradence.

Mr. J. Wilton Littlechild

Mr. J. Wilton Littlechild, O.C., Q.C., I.P.C., acquired his Law Degree from the University of Alberta in 1976. Mr. Littlechild was the first Treaty Indian in Alberta to graduate with a law degree and the first Treaty Indian elected to Canadian Parliament. He is an outstanding athlete and continues to be heavily involved as an organizer in sporting events. He received the Order of Canada in 1999.

As a Member of Parliament (1988-1993), Mr. Littlechild served on several senior committees in the House of Commons and was a parliamentary delegate to the United Nations. At the international level, he organized a coalition of Indigenous Nations that sought and gained consultative status with the Economic and Social Council of the United Nations, and he is now working with the UN on the creation of a permanent United Nations Forum for Indigenous Peoples. He has been recognized as Queen's Counsel and Indigenous Peoples Counsel by the legal profession. Mr. Littlechild speaks Cree, English and French.

Mr. Hugh Harradence

Mr. Hugh Harradence, Q.C., is a partner with the law firm of Harradence Logue Holash in Prince Albert, and practices as a litigator in both criminal and civil matters. Mr. Harradence was appointed Queen's Counsel for Saskatchewan in 1999 and has recently been active as a Coroner for four inquest investigations regarding the deaths of Aboriginal victims in Saskatoon.

Mr. Harradence is the former president of the Canadian Bar Association Saskatchewan Branch and has been a significant contributor within the legal community.

Ms Glenda Cooney

Ms. Glenda Cooney is currently serving as Deputy Children's Advocate in Saskatchewan and is former Deputy Ombudsman for Saskatchewan. Ms. Cooney is Past-President of the John Howard Society of Canada and contributor to several United Nations forums on criminal justice. She has worked for the Solicitor General of Canada in policing, corrections and parole, and was a member of the National Parole Board of Canada.

She has served for years as an advocate for community based restorative justice and alternative dispute resolution.

Mr. Joe Quewezance

Mr. Joe Quewezance served as the elected Tribal Chief of the Saskatoon Tribal Council for six consecutive two-year terms, between October 1988 and October 2000. While serving his terms as Tribal Chief, Mr. Quewezance represented the Saskatoon Tribal Council on the Boards of the Saskatoon Indian Institute of Technology and the Saskatchewan Indian Equity Foundation.

Mr. Quewezance has been very involved in the social and economic development of the Aboriginal community in Saskatoon. As a member of the Yellow Quill First Nation, Mr. Quewezance served as Chief for ten years and as a band councilor for several years.

Ms. Irene Fraser

Ms. Irene Fraser is a grandmother with a Metis background. She is also the Regional Manager of the Aboriginal Unit, for the National Parole Board, Prairie Region in Saskatoon. She has been involved in several areas of the justice system for approximately twenty years. In her current work Ms. Fraser has been heavily involved in the development and coordination of Elder and Community-Assisted parole hearings, as well as in developing and presenting to Aboriginal communities on legislation, policies and practices of the National Parole Board. Ms. Fraser is currently on a secondment to the Adjudication Secretariat in Regina. The Adjudication Secretariat is responsible for coordinating the dispute resolution hearings of former residential school students.

INTRODUCTION

The Commission on First Nations and Métis Peoples and Justice Reform, announced November 15, 2001, was mandated to address concerns raised over the treatment of First Nations and Metis people by the justice system, particularly the police services. The tragic deaths of two young men, Lawrence Wegner and Rodney Naistus, focused attention on the present day justice system and the need for change.

> **We want justice. Justice is something that comes from here. Justice is something that Creator gave us. It has to do with love. It had to do with benevolence. It has to do with the ability to forgive and to do something in restitution of whatever it is that we do wrong. Comes from within here. We had that.** *(Elder, Treaty Four Community Dialogue)*

The Justice Reform Commission has four partners, which makes this commission unique. The Government of Canada and the Province of Saskatchewan have the main responsibility for creating law and administering justice, and the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan are the political voices for First Nations and Metis people. The Commission submitted its first three reports and this, its final report, to the federal government, the Province, Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan. It is the hope of this Commission that all First Nations and Metis people and their communities will look at this report as theirs. The wisdom, guidance and suggestions presented over the past two years has been invaluable in the writing of this report.

From the beginning, the Commission wanted to be certain this report would reflect the voices of those who wanted reform and who would be committed to making certain tomorrow will be different from today. Our goal is to create a Saskatchewan that will be better for our children and our grandchildren. People involved in justice, from frontline workers to political leaders in all parts of Saskatchewan, were invited to give us direction. From their guidance came the creation of our Vision:

One Community – working together to create a healthy, just,
prosperous and safe Saskatchewan

meyo wahkotowin

dene araya who teeya al then

And, our Mission/Vision:

To create change and make a difference by:
Listening to people
Building relationships
Promoting respect and change
Recognizing success, and
Making recommendations for future justice reform.

We were told that communities have the knowledge and that change will come if committed people work together to make it happen. Building relationships between people, between employees, and between community and government is necessary to create conditions where important and lasting reform can take place. One community acknowledging respect for diversity; the best enjoyment of individual rights is as a part of a group or in community with others.

Our past is important and the Commission recognized that it was valuable to look at our collective history. However, as a Commission we were committed to looking to the future and to seek solutions to the issues that were identified and well researched.

We asked ourselves: After some 30 or so previous commissions, how can we make a difference? Although, we were directed by our Terms of Reference to hold hearings, we decided to hold dialogues with and in communities. Community dialogues were considered vital in the process of communicating with the people of Saskatchewan. This strategy was regarded by the Commissioners as the best means of gathering the wisdom and knowledge of the people who are directly affected by the justice system. Through the Community Dialogues, the Commission heard not only the concerns of Saskatchewan people but also learned of examples of programs that are successful and, perhaps most important, heard solutions to the problems of the justice system. Information and advice was invited from anyone with an interest in justice, in any form they wished to provide it. The Commission took part in discussions, both public and private; we accepted written and oral submissions in many forms, including theatre. Our goal was to be as open and accessible as possible in order to learn from the rich knowledge of people and communities.

We believe it is important to encourage an environment in which all people want to **Lift Each Other Up** as we develop as a community.

It is essential for people, communities, justice system employees and leaders in all governments to accept **Responsibility** for their actions and to make changes that will benefit the people, the community and the province.

Champions for Change, people who are prepared to work hard for a society that guarantees justice for all its citizens, must be identified. These Champions for Change will be individuals and organizations who will work to encourage reform long after this Commission has completed its job.

The Commission believes that the community itself needs to be the driving force of change – with strong support from governments and leaders.

This Commission wants to leave a **Legacy of Hope** for the people of Saskatchewan after June 30, 2004. If we have done our work properly, people who currently have no confidence in the justice system and see only despair in their lives will have reason to believe there is hope for a healthier, more prosperous future and that change is possible soon.

This Commission was committed to building on success. We discovered there are many personal and program successes. There are numerous programs operating in communities throughout Saskatchewan that effectively deal with the harm caused by offending behaviour thereby preventing further victimization. Responses based on First Nations and Metis culture are being used successfully in some communities; alternatives to the formal justice system and new programs within the justice system are in place. The Commission sees these programs as a major step toward making justice more fair and reasonable.

Previous commissions such as the Royal Commission on Aboriginal Peoples, the Manitoba Justice Inquiry, the Aboriginal Justice Implementation Commission and the Linn Reports conducted extensive research. A review of these commissions and others revealed that the issues discovered a decade or more ago still exist today. The first volume of this report contains a chapter, *Aboriginal Justice in Saskatchewan 2002-2021: Benefits of Change*, that was written by Warren Weir and Isobel Findlay, two professors from the University of Saskatchewan. The second volume of this report contains other papers prepared for this Commission. They focus on new trends and issues such as hope, fetal alcohol spectrum disorders, governance and implementation, youth and the courts, and the international view on improving justice.

> **Because I have a son, too, he's only seven now, he just turned seven ... they tell me that his chances of going to jail when he turns 16 are greater than for graduating from high school. I live with that every day. Everyday I wake up and hug him and I love him and I think about it every day. And I don't know that we're doing any good, you know, for myself and I guess my wife anyway to try to protect him. It's like I'm in some warped Hollywood production, you know. I'm fighting shadows and clouds and smoke. And when it clears there's nothing there, you know, it's an imminent danger and it scares the hell out of me.** (Stakeholder speaking in Saskatoon, November 26, 2002)

Our review of previous commissions was presented in our first Interim Report *Building on Success* (May 30, 2002).

Information the Commission gathered through the dialogues was insightful and helpful. The Commission learned that justice is not only about police, courts and corrections. Justice cannot be viewed as something simply involving crime.

Justice is about relationships. Justice is about respect and getting along. The present justice system is the result of many events that affect people's lives.

The solutions suggested throughout the dialogues were often directed at children and youth. This Commission's second Interim Report *A Dialogue in Progress: Focus on Youth* (January 15, 2003) looked at youth and contained information and wisdom from Elders, youth, community members and workers in the justice system. "Keep our children out of the 'system'" was suggested as the best possible form of prevention. "Let our communities be included, support our families". Youth frequently asked for a voice in decisions that affect them. These messages amount to allowing community members to find ways to interact with each other and ensuring safety and security of children within families.

The Commission's third report *Working Together* (November 20, 2003) is a summary of eight important areas that are discussed in the separate chapters of this report. *Working Together* recommended governments, agencies and employees work together to make sure those that need help receive it. To help them work together it was recommended that community-based and alternative justice solutions, such as embracing the concept of restorative justice, receive more consideration.

The third Interim Report provided a plan to put justice reform into action. The Commission considered the lack of success of previous commissions and found that all of them lacked a plan to put their recommendations into practice. The creators of this Commission identified this shortcoming and included in our Terms of Reference the following direction:

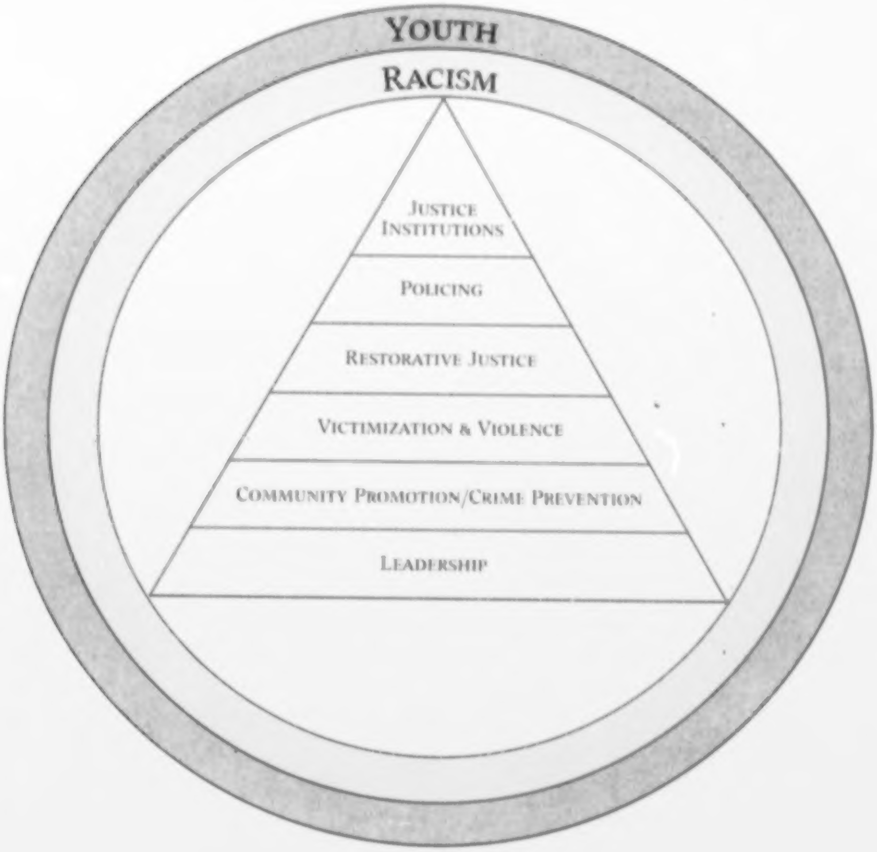
> **Recommend short and long-tem implementation strategies and identify a vehicle to oversee the implementation of its recommendations.**

In the Manitoba Aboriginal Justice Inquiry, "the biggest fear" was that its recommendations would not be put into practice and it took the Government of Manitoba ten years to create an Implementation Commission. This same fear was expressed repeatedly throughout our discussions. Based on its Terms of Reference, the Commission promised communities that this Commission's recommendations would not collect dust on the shelf and there would be an implementation plan created with the authority and responsibility to implement recommendations.

The third Interim Report contained an implementation plan with suggested rules, important limits and instructions. This plan was given to a working group representing the four partners. These partners were asked to give the Commission a plan that they could all support. This did not happen before this report was written, therefore Chapter Ten provides the recommended plan.

The chapters in this report have been ordered in a way that we feel is particularly significant. They are arranged in order of importance to help communities support change. The foundation of a healthy, just, prosperous and safe Saskatchewan is strong leadership. Leadership is the key to building potential, taking responsibility and a brighter tomorrow. If leaders are strong, communities are strong. Communities that ensure all members live a good life and are given opportunities to take part and succeed will ultimately be safer. Safer communities mean less victimization, greater harmony and a police service that does more than simply enforce the law. These communities will have less crime and therefore will have less contact with the justice system. Relationships would be healthy and, ideally, racism would cease to exist.

FRAMEWORK FOR KWYUSK



CHAMPIONS FOR CHANGE

Change is necessary and it must be beyond a simple tinkering with the system. Fundamental change is needed if we are to have a future different from our past. To accomplish this kind of change the following must happen:

a) There must be full participation of the federal and provincial governments and First Nations and Metis people. The Royal Commission on Aboriginal Peoples and the Aboriginal Justice Implementation Commission made it clear that any policy affecting the interests of Aboriginal people or communities should never be created or put into practice without the involvement of these peoples or their taking responsibility and a brighter tomorrow. If leaders are strong, communities are strong. Communities that ensure all members live a good life and are given opportunities to take part and succeed will ultimately be safer. Safer communities mean less victimization, greater harmony and a police service that does more than simply enforce the law. These communities will have less crime and therefore will have less contact with the justice system. Relationships would be healthy and, ideally, racism would cease to exist.

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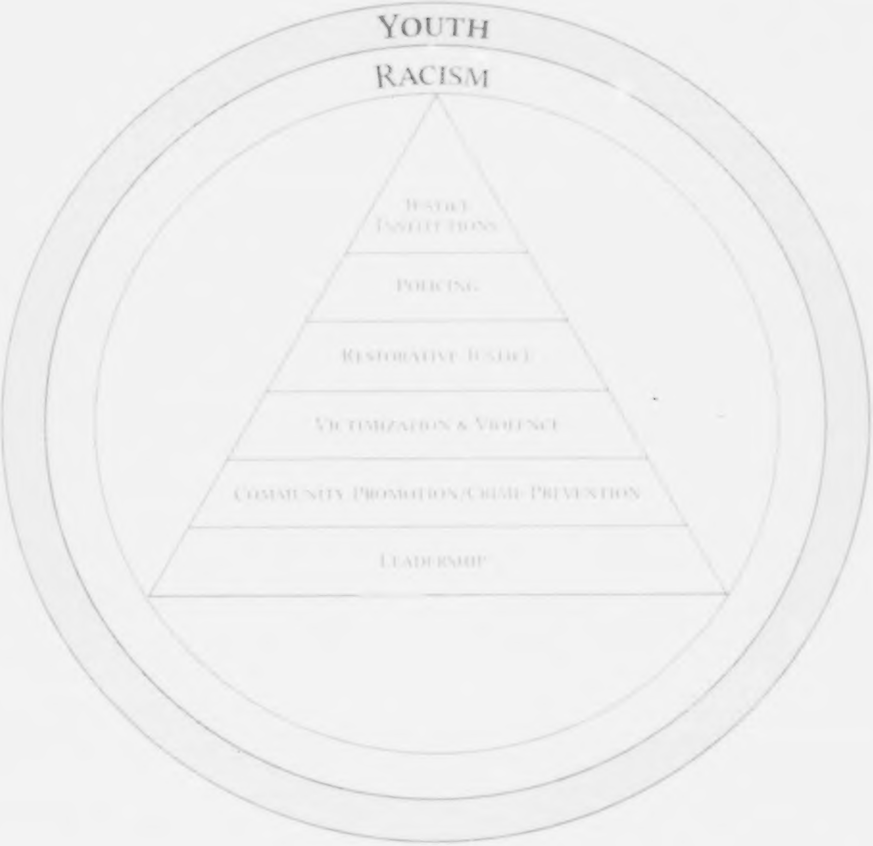

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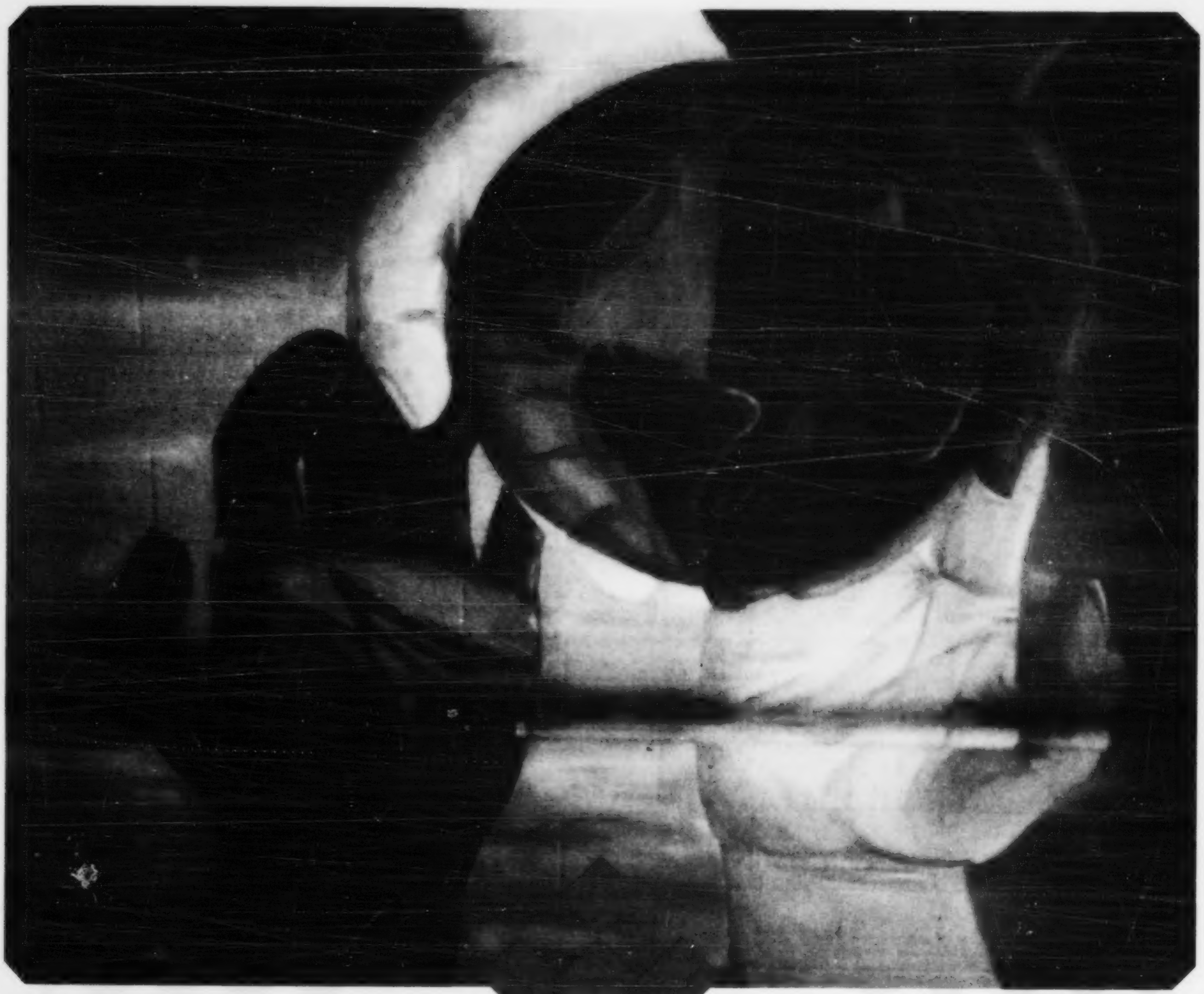
a) There must be full participation of the federal and provincial governments and First Nations and Metis people. The Royal Commission on Aboriginal Peoples and the Aboriginal Justice Implementation Commission made it clear that any policy affecting the interests of Aboriginal people or communities should never be created or put into practice without the involvement of these peoples or their communities. Similarly, when it comes to making decisions about First Nations and Metis children and youth, their full involvement is important to make sure they are no longer excluded. This will take strong leadership, setting differences aside and working together.

b) All four partners must have the political will to put into practice the recommendations in this report. This will require changes to the way government designs and implements policy involving First Nations and Metis people. This means more than supplying money. It means finding a new way to deal with issues and develop policy. This policy must be developed with the input of First Nations and Metis people with attention to the changes that are occurring.

c) Those who deliver justice and the leaders in First Nations and Metis communities must be willing to *return justice to the community*. Communities must become more involved in dealing with the causes and solutions to crime. They must determine the issues and they must be encouraged to find the solutions within their own community. This will require sharing power, authority and resources.

d) Everyone must be committed to improving the quality of life of First Nations and Metis people and the elimination of racism. To deal with the high number of First Nations and Metis people in the criminal justice system there must be a commitment to improving their education, health and employment levels.



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EMPOWERING FIRST NATIONS AND METIS LEADERSHIP

EMPOWERING FIRST NATIONS AND METIS LEADERSHIP

INTRODUCTION

> **A leader is supposed to love his people. A leader is supposed to love his family. A leader is supposed to care about his people. A leader is supposed to care about his family.** (Speaker, Black Lake Community Dialogue)

Without capable and committed First Nations, Metis and non-Aboriginal leaders to put our proposed reforms into practice, the plan could easily fail. If these important reforms are to go ahead, and if we are going to build a fairer Saskatchewan society, we will have to pay attention to the question of leadership. We must look at ways to support today's leaders, and we must find ways to create a new generation of leaders.

> **... youth councillors and youth Chief councils, which is building leadership for tomorrow and giving those young people an opportunity to be heard, to have hope that they can contribute to the communities in the future.** (Speaker, Prince Albert Grand Council Justice Commission presentation)

In this chapter, we discuss what we mean by leadership, as well as the unique and important qualities of leadership found in First Nations and Metis culture. We discuss where we believe leadership must come from to handle the changes we recommend. We also outline the steps that need to be taken to support current leaders, and to create the leaders of tomorrow.

THE IMPORTANCE OF LEADERSHIP

> **Our grandfathers talked about this justice. They talk about self-government. They talk about Treaties. What are Treaties? The old people talked about these things. You know, one of the most important elements we got to believe in is this, that at one time we were the sole owners of this land. And there's a reason for that. We had our own way of doing things. We had our own justice system. We had our own laws. We had our own leadership. We made laws and they were keepers of our laws. They were a group of people, people who sat out here who knew their laws, who knew the laws of the tribe and of the Nation, compiled from the families who had family laws, that came from their belief, from a Creator that instituted all of their truths.**
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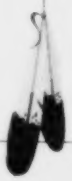
> **And then from there, the Creator gave us dreams and ways to interpret the things and ideas that he gave us. They call that the Grandfather's, Creator's law.** (Elder, Treaty Four Community Dialogue)



A leader acts as a guide. A leader shows the way. Leaders may direct, or even command, but, more often, leaders persuade or stimulate because they have the opportunity to go first or come before others. Leaders may get their authority from the positions they occupy, for example, Chief or deputy minister. However, many leaders have no formal authority. They are leaders because they are respected for their wisdom, their understanding of what can be done, their honesty and their commitment to others. Leaders have insight into important issues, problems and opportunities. They also can speak about a better way – a vision that inspires others to take action. Leadership, quite simply, is what leaders do!

Youth from the Community Vitality Workshop held at Rabbit Lake in 2002 indicated that Leadership cannot be judged by age, sex, employment, gender, race or stature in the community. Good leadership can be judged by the way one wants to create a positive change in the community as a whole.

> **Economics, education, there's a lot of other factors that we know that come forth, and holistically we have to look at all spectrum of, and I truly believe that leadership, community leaders, everybody that's involved that want change, all of us has to be a part of that change**. (Speaker, Prince Albert Grand Council Justice Commission presentation)

Research and discussions have shown what the qualities of successful leaders are and how leadership skills are developed. This is not the place for the Commission to discuss these issues, but we do wish to make the point that leaders are not born. They are nurtured and developed. This Commission believes that leadership requires a complex interplay of skills (such as discipline, flexibility, self-awareness, self-management, ability to learn, drive, purpose and honesty). It also requires the knowledge and skills to work with others and within organizations. Such work calls for the ability to manage effective work groups, the ability to build and maintain relationships, the ability to communicate, the ability to develop others, the ability to inspire, the ability to manage change, the ability to solve problems and make decisions, the ability to influence, the ability to take risks, and the ability to set and obtain goals and make plans. Some may come by these skills naturally, but for most they are learned. In the right settings, they can be taught, practised and cultivated.

Youth from the Community Vitality Workshop held at Rabbit Lake in 2002 indicated that a good community leader:

- Is responsible for his or her actions
- Is a positive role model
- Is respectful of and respected by the community
- Encourages participation, involvement and team building throughout the entire community

> **Families have responsibility. Who has influence over children but families? That's where it all starts. We as leaders have also got to support that.** (Speaker, Black Lake Community Dialogue)

The history of First Nations and the Metis people has many examples of outstanding leadership. Leadership in a First Nations and Metis culture addresses different needs; both from the standpoint of what leaders try to achieve, as well as how they go about their work – their style of leadership. For example:

- For First Nations and Metis leaders, their goal is the independence, recognition and well-being of individuals, families, communities and Nations. Leaders work to achieve equality, health and prosperity for their peoples by seeking support for the right of self-determination.

- First Nations and Metis leaders take a historical view of problems and opportunities. The history of relations with the settlers is important. Historical agreements, understandings and Treaties are important. The continuity of relationships through agreements between First Nations and Metis and other Nations is important.

- First Nations and Metis leaders take a holistic view of problems and opportunities. They believe concerns and issues have physical, emotional, mental and spiritual elements. For communities and Nations these problems and opportunities have social, economic and political features that are connected. Problems and solutions arise from the relationships of people, families and communities – and from Mother Earth and Father Sky.

- First Nations and Metis leadership is rooted in culture. This leadership accepts First Nations and Metis culture and identity. A high value is given to the involvement of Elders and medicine people. High importance is attached to traditional knowledge and traditional ways, and the wishes of the Creator are at the centre of all that is important.

- First Nations and Metis leaders encourage policies that recognize the importance of cooperation and partnerships. They see cooperation and partnerships as a basis for successful collective action.

- First Nations and Metis leaders understand that one of their most important responsibilities is to help give their communities voice. Their leadership reflects the main concerns of the community, and leaders feel they must answer to their communities. Policies and government developed by First Nations and Metis leaders assure community involvement and community voice.

> **Leadership must be knowledgeable about tradition and cultural teachings. They will work to develop future leaders who are trained to utilize methods and techniques taught through traditional and ancient teachings, as well as contemporary governance.** (Submission by Federation of Saskatchewan Indian Nations)

We believe that First Nations and Metis leadership is necessary for going ahead with the recommendations we have made for several reasons:

- First, First Nations and Metis communities have unique cultures, histories and traditions. They face different circumstances when it comes to justice, health, social and economic conditions, getting services from the rest of society, their attachment to their traditions and other factors. One type of program or service will not work for every individual or for all communities. In fact, thinking about community and individual needs in a simplistic way will, we believe, result in simplistic solutions. We believe First Nations and Metis leaders must identify and respond to the needs and hopes of their communities.

- Second, we believe First Nations and Metis leaders have an important role representing their communities. Sometimes they work with provincial, regional or national governments. At other times they work with organizations that deal with problems of women, the elderly, children and youth. They also work with organizations to deal with such things as economic development or education. Leaders must also represent the interests of their communities in these situations.

- A third role for First Nations and Metis leaders is to obtain funding and services for their communities. Often this involves interest based negotiating with governments and people from the broader society. However, leadership must also make sure their communities build up their own resources, and that these resources are used to deal with community priorities.

- A fourth role is to build partnerships with people who work in justice, health, education and many other areas. We heard throughout our dialogues that attempts to make these people aware of the needs and hopes of First Nations and Metis people often failed. However, we believe true partnerships between First Nations and Metis communities and non-Aboriginal bureaucrats are both possible and important.

- Perhaps the most important thing First Nations and Metis leaders can do is provide a positive vision of the future, a vision that gives hope to dispirited individuals and communities, and inspires members of the community to work together for the common good.

In these and other areas, First Nations and Metis leaders can make a long lasting contribution to the well-being of their communities and Nations.

> **With the healing lodge, hopefully the people that do come there do heal and take something home with them. And the same – ask the Creator for the same thing in our justice system because we as leaders of our Nation, each First Nation has to set a good example to our youth so that they will have something to fall back on when they want to change their lifestyle.** (Elder, Beardy's and Okemasis Community Dialogue)

Members of First Nations and Metis communities also have important roles to play in their leadership. We encourage community members to participate in choosing their leaders. Without this involvement, leaders are not legitimate. It is also important that leaders receive the support of the members of their communities. Leaders cannot deal with important community concerns on their own. Effective community action not only requires leadership, it also requires community support for that leadership.

> **And if you want changes, well think about who you vote for in our community when it comes to leadership. Don't look at, hey, that's my sister, I'm going to vote for her; or this is my auntie, I'm going to vote for her. Think about the qualities of that person. What kind of a job is that person going to do?** (Speaker, Sandy Bay Community Dialogue)

LEADERSHIP AND COMMUNITY DEVELOPMENT

> **I think that we agreed completely around the idea that governance and community development cannot be separated, the one from the other, for the reason that community development is not possible, community development in any kind of positive way is not possible without governance.** (Speaker, Governance & Community Development Roundtable)

In the next chapter, we talk about the importance of the community development approach to the problems many First Nations and Metis communities face. Another way to think about leadership is to ask who will lead the community development process, especially when times are difficult.

> **... I think in relation to the communities themselves what I hear from them is a common vision, you know, we all want to work towards building healthy families, healthy family structures. So any way that we can support communities to work towards developing and building happy and good family structures and good family inter-community relationships.** (Speaker, Meadow Lake Community Dialogue)

We believe that health and social concerns that lead to justice problems in First Nations and Metis communities cannot be solved without the help of their families, communities and Nations. These communities need safe, secure opportunities to deal with social and health issues. This view on preventing justice problems by promoting health and healing is supported by the experiences of First Nations and Metis communities, and also by the latest thinking and research.

> **Education is only part of the justice system, the justice system is only a part of health, health is only a part of ... they are integrated in such a way that they support and help each other. You can't just target education; all the others [sectors/programs] have to be also resourced in such a way that they are supporting that whole wheel, so the wheel moves in balance as part of the community development or community awareness.** (Speaker, Meadow Lake Community Dialogue)

While all communities can use help when it comes to social development, no two communities are alike. A social development plan for a community must be designed by that particular community. Also, not all First Nations and Metis communities have serious justice problems. And even in those that have, the nature, extent and character of the problems will be different from those in other communities. So will the range of possible solutions. A uniform approach is not possible. While there may be many common concerns and hopes, each community must figure out its own needs and, in the end, find its own way.

> **... because to my understanding every reserve, every community is unique in its own characteristics, and we need to establish our own policies in regards to funding, in regards to the jobs available here. I don't think that, you know, with the funding that there should be a set policy set in place that's going to work across the country because it's not going to happen. Every community is unique, their cultures are unique, and therefore, we should formulate our own policies as to how to mandate the funding.** (Speaker, Onion Lake Community Dialogue)

Communities know what they have to do when dealing with justice issues. They must have the assistance to research and plan solutions, and put the solutions in place. This may require creating local organizations, which should include a small group of community leaders and Elders. Such organizations are already in place in some communities. Some communities may require advice, funding or other support. Building on these strengths will be helpful.

> **I strongly believe that is where it starts. If we can raise our families with strong values and beliefs, our families can go on to live up to, like, those values and move on into the community and so on into the rest of society and the world. That's where ownership starts, whether people realize it or not.** (Speaker, La Loche Community Dialogue)

First Nations and Metis communities themselves have developed the most promising responses to justice problems using their own community development methods. One leading example of community responses to justice issues is Hollow Water.

Hollow Water First Nation
Wanipigow, MB
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Phone (204) 363-7278
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www.seed.mb.ca/hollow.html

> **Well, the Hollow Water example keeps coming up over and over again, where the community just took charge of a slice of the criminal system and produced spectacular results, and I know they went through valleys and that sort of thing, but it is and remains a powerful example of what can be done.** (Speaker, Governance & Community Development Roundtable)

Like the well-known Alkali Lake experience, each followed a similar pattern of development:

- Some members of the community decided that there was a pressing community problem and that something should be done about it. In different communities, different problems have inspired community action – suicide, drug or alcohol abuse, violence, crime.
- A few community leaders, not necessarily holding office, began to communicate, raise awareness and consult with the community.
- Over time, there was a feeling in the community that something needed to be done.
- The community researched its needs, attitudes and ideas, as well as possible solutions.
- Possible solutions were discussed with other groups in the community and with people outside the community, such as those in the justice system, and potential funding sources.
- People outside the community at first did not favour the community's proposed solutions. However, through ongoing discussion, the community was eventually able to gain their support.
- Agreement was reached on what to do, and guidelines and designs for programs were developed. After some adjustment these programs were put into practice.
- While these programs were being put into practice, the community was sounded out to make sure the will of the community was being respected.
- Reviews and improvements of the programs were made with the input of those from outside the community and from the community as well.

While each community is unique, there are ways to help all communities to undertake self-assessment and development. For example, once a community has discovered a pressing issue, it could be given the funding to try a solution that has worked elsewhere. Advice and help from others who have been through the same thing could be valuable. Tools that deal with specific issues, such as guides to assess what should be done and how to work on community development could be written. Resource centres could be created to house these materials and to identify people who could provide help.

> **I agree that communities have to take that responsibility, but if you are going to download that responsibility, you have to ensure that proper funding and resources are put in place.** (Speaker, Implementation Roundtable)

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alkali_lake.htm

Community justice forums, healing ceremonies and getting community representatives and leaders involved in planning and decision-making will help to restore communities and to take back justice.

> **There has to be training for the people that are going to take on this task. It is not easy, it's very, very, hard.** (Speaker, Beauval Community Dialogue)

Experience shows that successful programs grow from action based on community development values. First Nations and Metis communities are leaders in this area, and they have shown that even the best programs will do little good unless communities have had a chance to find the problems and come up with the solutions themselves. There will be few results if solutions are imposed from outside the community.

> **There needs to be some inter-agency approaches to addressing issues, a holistic approach, which is all-inclusive. That's what it is right now, the same policy that is implemented in Southern Saskatchewan is being implemented in Northern Saskatchewan and quite often it does not fit because of the differences. There needs to be that flexibility at the regional level and local levels for these departments, so that they provide local solutions for local problems.** (Speaker, Beauval Community Dialogue)

We believe that this is the most important role for their leaders, and that every effort must be made to support these leaders to take on this role so that justice can be returned to the communities.

CHALLENGE AND RESPONSIBILITY OF LEADERSHIP

For thousands of years, the ancestors of Saskatchewan's First Nations and Metis people lived on the Prairies in tightly knit communities that were able to adapt to any conditions. Many different forms of societies developed, but each looked after all the members of the community – elderly, children and women. While conditions were harsh, the communities that developed looked after the health, and the social, economic and spiritual wellness of everyone. Historical accounts show that the members of these First Nations and Metis societies were remarkably healthy, prosperous and well adjusted to their surroundings.

These early societies produced what were, by any standards, outstanding political and spiritual leaders. As is the case today, many of these leaders played important roles within their Nations, within Canada and internationally.

In our reports, and in the reports of other Commissions that have come before ours, many social and community problems in First Nations and Metis communities have been brought up. These problems are serious and cannot be ignored. At the same time, repeating such a list of problems can create negative attitudes toward First Nations and Metis people. Problems are often blamed on the individuals who are suffering. Questions are asked about the ability of leaders to do something about the problems. Of course, all of this fails to look at the long history that has led to the present situation.

> **... the Elders say in order for us to return back to justice, we must return back to our grassroots and to find ourselves. Yes, we can go around blaming other people, but it begins with us, as the Elders say. But our children, we must teach them the walk of our ancestors. These laws that they followed for many centuries. We must re-educate them back to that, and it begins here within the school, within the families.** (Speaker, Pelican Narrows Community Dialogue)

As has been discussed elsewhere (Royal Commission on Aboriginal Peoples, 1996), First Nations and Metis communities have been undermined during much of the last 150 years. Traditional societies were disrupted. First Nations and Metis leaders were weakened, replaced or worse. New leaders and governing systems were forced on the communities by the state. Ceremonies and spiritual practices were outlawed. Reserves were created. Residential schools were established. These changes ripped up families, communities and Nations, and forced First Nations and Metis people to depend on the state. This was something that was previously unknown to them. The results of this history can be found in the problems we are seeking to solve today.

> **People have to take responsibility and that's tied to authority. In order to address authority, you have to know why you don't have it now. It is because we've lived under a state of learned helplessness for so long in a government system that has not recognized us as First Nations people with authority. We need to go back as First Nations people and assume that authority and that responsibility because it is ours. And then, I believe, we can heal.** (Speaker, Meadow Lake Community Dialogue)

What has not been widely understood is the impact of this history on First Nations and Metis leadership. Leaders were ridiculed, undermined, exiled, jailed and executed. Whole generations were the victims of poor health and social conditions. New governing systems were imposed. New leaders were imposed. Sacred and traditional systems for assuring the continuity of leadership that bound families, communities and Nations together were undermined or outlawed. It is only in the last 40 years that First Nations and Metis communities have begun to emerge from a century of state policies designed to wipe out First Nations and Metis peoples as distinct peoples.

> **The government has made us so dependent ... so dependent that things won't happen unless the government says yes or no ... so dependent on government they can't do anything for themselves. That's a major concern.** (Speaker from Ile-a-la-Crosse at Beauval Community Dialogue)

Youth from the Community Vitality Workshop held at Rabbit Lake in 2002 indicated that community leaders should not:

- Have a negative outlook and negative opinions.
- Have dictatorial tendencies.
- Abuse drugs or alcohol
- Foster racism or have racial bias.
- (forget) that we [youth] are part of the community or that we have ideas and a role to play in the positive development of our communities.

First Nations and Metis leaders today face major challenges. Often they operate within government-imposed systems that work too slowly when it comes to dealing with community needs. Too often community leadership and the needs of families are not respected. Communities are large and complex. The resources available to meet community needs are often inadequate. To develop the community to the point where it can effectively deal with these problems takes strong determination over decades and even generations. Some communities are discouraged or fearful, or they are in danger of losing hope for the future. Moreover, leadership carries few rewards, but major risks.

> **... [what] we've got to work towards is First Nations, Metis, if we're addressing a social situation that's going to face our family, it has to be directed to both, and you just can't say, well, Indian Affairs is responsible for this, the Province is responsible for that, and that's where you end up with gaps.** (Speaker, Governance & Community Development Roundtable)

Despite the many obstacles, leadership at the community level, as well as within First Nations and Metis political organizations, survived, and continues to thrive. This is proof of the ability and commitment of First Nations and Metis leaders in Saskatchewan.

LEADERSHIP AND GOVERNANCE

> **There is a subtle difference in terminology that must be clarified ... the term "governance" is not synonymous with "government." Confusing these terms can have unfortunate consequences. Policy issues that may have a problem of governance become defined implicitly as a problem of "government." Governance is about how governments and other social organizations interact, how they relate to citizens, and how decisions are taken in a complex world. Thus, governance is a process whereby societies or organizations make their important decisions; determine whom they involve in the process and how they render account. That is through agreements, procedures, conventions or policies that define who gets power, how decisions are taken and how accountability is rendered.** (Submission by Metis Family & Community Justice Services Inc.)

The support of current leaders and the encouragement of the next generation of leaders requires adopting governance structures that meet the needs of communities and Nations. We do not believe that there is any one structure or approach that will fit all circumstances. What this Commission believes is that First Nations and Metis people must have an opportunity to establish the governance structures that suit their values, culture and needs.

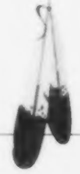
If you're going to run for politics, if you're going to run as a leader, you do have to look at today and the future, we cannot continue living in the past, and we cannot continue blaming the justice system, that Indian Affairs. Sure they did a lot of damage, but we have to move from there, and in my business, my line of work that I'm doing, I empower First Nations people, there is nothing stopping [us] from moving forward ... (Speaker, Battleford Community Dialogue)

Without governance structures that are accepted and supported by the community, leadership cannot grow. Without such structures, there is too much uncertainty about leadership roles and responsibilities. There is too much possibility for conflict among competing interests. In such an environment, leadership cannot operate. The role of governance is fundamental in improving the lives of First Nations and Metis people.

Governance is an important foundation for addressing and improving these social issues. Not only does good governance support effective administration of social programs, it also promotes the overall health and stability of a community. It empowers people and provides hope. (Roy Bird, Co-chair Joint Ministerial Advisory Committee)

- Good government requires authority and resources.
- Good governance is about the ability of people to shape decisions that influence their lives.
- Good governance needs these basics: enough human and financial resources to do the job, open procedures for decision making (including selection of leaders), community commitment to good governance, accountability of governments and leaders, and necessary management structures, rules of law and management ability.
- Good governance enables communities and their leaders to take effective action.

The reason why the government powers hang on to control is because they don't have respect for the place of others in the community and they don't believe that others can come up with some answers that are as good as the ones they can come up with. So the relinquishing of control is to allow communities to find their own way, and that will involve potentially making mistakes, but the mistakes that communities make are probably no worse than the mistakes the governments make ... the power of letting go of paternalism. (Speaker, Governance and Community Development Roundtable).



We support the findings of the Royal Commission on Aboriginal Peoples (1996) that First Nations, Metis and Inuit rights to self-determination and self-government are existing rights that are protected by Section 35 of the Constitution. Furthermore, this Commission believes the recognition and protection of these rights in Canada's Constitution is an opportunity to establish a variety of different governance systems. In our view, this is not only allowed within the Constitution, but it is to be encouraged so that the values, traditions and preferences of different peoples and Nations can be fully respected.

Canada has made some 67 Treaties with First Nations people, in most cases to gain access to their land. By the late 1960s, however, these Treaties were being ignored by the government. This was corrected in 1982 when the *Constitution Act* gave the Treaties recognition and protection. In the last quarter century Canada's government and its courts have come to acknowledge that the Treaties are agreements between nations, that they are different from contracts and that they belong in a special category.

When Canada purchased Rupert's Land in 1870, the territory presented a challenge to a government anxious to settle some of it with Europeans and build a transcontinental railway to assert its sovereignty and prevent the region's annexation by the United States.

To avoid costly "Indian Wars" that the U.S. had faced, Canada chose to make Treaties with its First Nations. By the time negotiations began, the buffalo had disappeared and the fur trade was in decline.

First Nations people realized they had to work with the newcomers to develop new economic vehicles. In exchange for access to their country, First Nations were promised, among other things, a land base for agriculture and education in farming skills. They were also allowed to continue with their former economic activities – hunting, fishing and trapping.

They saw the Treaties as a means to protect their own interests and their way of life and as a bridge to future relations with the newcomers.

Although there was an agreement, between nations, to share the land for the benefit of all, the First Nations never signed away their right to govern themselves. And as for the "spirit and intent" of these Treaties, First Nations people feel that they have been shortchanged.

The Commission is encouraged by the positive discussions about Treaty-based self-government that are taking place at the Office of the Treaty Commissioner (OTC). The OTC mandate is to facilitate exploratory Treaty discussions and common understandings between the Federation of Saskatchewan Indian Nations and the Government of Canada on the nature of new Treaty relationships and Treaty issues. The OTC uses the Exploratory Treaty Table (ETT) as a forum to discuss Treaty related issues like justice,' consult with Elders and conduct research. We believe these discussions can and should lead to the establishment of Treaty-based governance in Saskatchewan. We realize, however, that these discussions have been complex and time consuming. We encourage all involved to achieve results as soon as possible.

Recommendation 1.1
This Commission recommends that the Office of the Treaty Commissioner's mandate be continued beyond 2005 and that the Government of Canada, the Federation of Saskatchewan Indian Nations, and Office of the Treaty Commissioner, with an expanded mandate, accelerate their discussions concerning Treaty-based governance and take into account recommendations of this Commission in concluding agreements as quickly as possible.

The Metis Nation – Saskatchewan supports Nation-to-Nation discussions between the Metis Nation and the Government of Canada aimed at recognizing their rights to self-determination and self-government. The Commission supports this direction and urges the parties to accelerate the discussions so that governance systems can be put in place for the Metis peoples.

> *Metis Act Part III*
> *3(1)* **The Government of Saskatchewan and the Metis Nation – Saskatchewan will work together through a bilateral process to address issues that are important to the Metis people, including the following: capacity building; land; harvesting; and governance.**

Recommendation 1.2
This Commission recommends that the Government of Canada and the Metis Nation – Saskatchewan establish a Nation-to-Nation dialogue aimed at establishing appropriate governance structures for the Metis people that will address justice issues, as well as other aspirations and needs of the Metis people.

Recommendation 1.3
This Commission recommends that the Government of Saskatchewan also participate in these discussions as an observer.

We believe the time has come to recognize First Nations and Metis self-government through an Act of Parliament. The Implementation Commissioner should monitor developments of such an approach.

AN ACTION PLAN FOR EMPOWERING FIRST NATIONS AND METIS LEADERSHIP

While it is necessary to create governance structures to deal with the concerns we have raised in our report, it is also necessary to have a plan for empowering First Nations and Metis leadership. This is needed to bring about the new approaches to justice and community development we are recommending. Without this leadership it will not be possible to make the desperately needed improvements in justice services and community conditions.

> **And so when you work with the community, you need to respect that they'll have their own processes, they'll make their own mistakes, they'll have their own ways to do things.** (Speaker, Governance & Community Development Roundtable)

The ability of First Nations and Metis communities to provide needed services must be improved through substantial and ongoing support of their leadership development. Moreover, we believe this development must be an important part of all relationships between Canadian governments, service agencies, and First Nations and Metis organizations.

We believe a number of approaches are required to help develop First Nations and Metis leadership. These include:

1. Increasing the size and number of leadership training programs in First Nations and Metis institutions.

2. Improving the leadership content in mainstream education and training programs.

3. Improving First Nations and Metis students' ability to take more training by providing financial and other support.

4. Improving the cultural content of leadership training programs so that they meet the needs of First Nations and Metis leaders and communities.

Youth from the Community Vitality Workshop held at Rabbit Lake in 2002 indicated they believe there is a need for youth leadership training programs, and that our communities should allow youth representation on boards, committees, and clubs in order to help us [youth] build the leadership skills they will need in the future.

This Commission believes advances in developing leadership is important for the well-being of First Nations and Metis peoples and we are concerned about the present shortage of leadership resources. We do not believe enough is being done to solve this problem. Although many reports have called for action to build leadership, we believe there has been little progress to date.

Preparing people for leadership in justice and community services should not be left entirely to those who have formal training. However, there are many tasks involving governance and programs that should be done by people with specialized skills. Improving leadership must consider how these needs can be met. Those who appeared before our Commission all agreed that better recruitment, training and retention of First Nations and Metis people in all professions are needed to meet current and future needs.

> **Employment equity has been generally limited to the front-line staff. This practice of indigenization does not appear to have changed the fundamental value base, nor has it eliminated systemic barriers, nor has it improved the attitude base, nor has it shifted the power and control base in any significant fashion. Most importantly, it has not delivered better outcomes.** (Speaker, FSIN Health & Social Development and Indian Child & Family Services presentation)

While significant efforts have been made and noted, our own observations and the presentations we received lead us to believe there are a limited number of First Nations and Metis administrators, officials, police officers, court staff or justice researchers.

Because of this critical shortage of First Nations and Metis professional staff and the serious justice issues that must be faced, we believe there must be an increase in professional training for First Nations and Metis people.

Recommendation 1.4
This Commission recommends that:

1.4.1 The governments of Canada and Saskatchewan establish First Nations and Metis Leadership Development Funds to promote leadership training for First Nations and Metis people.

1.4.2 That an Institute on Traditional Law and Governance be established by 2007 to provide training to First Nations and Metis professionals and leaders in Saskatchewan.

From what we saw, we believe that First Nations and Metis professionals are often found in the lower ranks of organizations. We estimate that the number of First Nations and Metis policy and senior staff in justice and community services in Saskatchewan is low. This means that First Nations and Metis people do not have the opportunity to influence program design and program delivery.

The Metis Family & Community Justice Services Inc. is concerned about long-term plans for developing leadership that will allow justice to be returned to the communities. The concern is Metis communities do not now have the resources to govern their own institutions. They see a need to have functioning institutions to strengthen the fabric of their communities. They also want to be in a position to restore community based healing and justice.

Initiatives should be based on successful programs for increasing the numbers of First Nations and Metis people in court worker, Justice of the Peace and police programs. These programs have overcome many challenges and positive lessons can be learned from them.

> **Education is really important. Our kids need to go to school and get educated, and education is so important, but we don't recognize that there is more than just institutional education. There's education in the Aboriginal communities that's traditional that needs to be respected as well.** (Speaker, Governance & Community Development Roundtable)

As of September 2002, 11.4 per cent of employees in the Departments of Justice and Corrections and Public Safety were self-declared as being of Aboriginal ancestry. Although this proportion is similar to the proportion of Aboriginal people in the provincial population, the departments will work to recruit more Aboriginal employees – particularly at the supervisory, managerial, professional and executive levels. (Presentation by Saskatchewan Justice and Corrections & Public Safety, January 2004)

Participating in professional education often depends on financial, academic and family support. There has to be a commitment from the educational institutions and from governments. There are many examples of this type of support being provided, but it must be increased to assist more First Nations and Metis students in professional and leadership studies.

> **I'm saying we should all have opportunities to have choices in our lives, that's why education is so important for young people, and if that's the focus of getting people independent, whether it's in the North or whether it's in the cities, but everything should be done now to support those communities, the people living in those communities, to be able to have a quality sort of life so that their kids can learn and when they grow up they can be independent because they have their own education, and if they have a rise in income, then presumably they can look after their own housing and they're not dependent on governments any more.** (Speaker, Governance & Community Development Roundtable)

This Commission believes it is important to retain quality First Nations and Metis teaching staff. It is also important to look at what is being taught in professional education with an eye to making it more culturally appropriate. We believe the success of First Nations and Metis students in mainstream education is improved when there are enough of them to support each other. Where this happens, there are also benefits for non-Aboriginal students. An exchange of knowledge, experience and practice between First Nations, Metis and non-Aboriginal students enriches the experience for all.

This has led to creative approaches that have improved educational opportunities for First Nations and Metis people. Some of the results were: creating admission and retention targets, developing more appropriate entry requirements, creating preparation programs, organizing financial, academic and family support, increasing financial commitment, creating support for professionals after graduation, using mentorship and exchanges, and coming up with different ways to deliver professional education to increase its effectiveness.

Recommendation 1.5

This Commission recommends that post-secondary institutions and professional associations work together to develop plans that will ensure that professionals already in the field have access to programs of continuing professional education that emphasize cultural issues associated with the provision of justice services.

As their educational and professional institutions develop and as self-government proceeds, First Nations and Metis people will take a larger role in recognizing and certifying professionals based on their standards. However, mainstream professional organizations must also look at how they can recognize the value of what First Nations and Metis people have learned through traditional teachings, formal education and life experience.

Developing First Nations and Metis leadership must look beyond programs of study. We believe these programs are useful, particularly if they are developed with input from First Nations and Metis people. However, by themselves they will not be enough to meet the needs for leadership that we have identified.

We believe community-based training is an important follow-up to formal education. Our opinion is based on the following realities:

1. A realistic plan for developing First Nations and Metis leadership must provide for community involvement and recognize traditional practices. The plan for First Nations and Metis leadership must look at ways to increase the quantity and quality of this indigenous leadership, and support leaders now struggling to improve justice conditions in their communities.

2. First Nations and Metis communities and Nations must be able to share their ideas, to learn from one another and to develop shared approaches to dealing with training needs. While post-secondary institutions may have something to offer, First Nations and Metis communities and Nations must also be able to decide what their needs are and seek their own solutions.

3. Full-time study over several years far from First Nations and Metis communities does not work for many potential leaders. While many solutions, such as distance education, are being offered, it will be some time before all professional training is available in most First Nations and Metis communities across Saskatchewan. Even in urban areas, where an increasing number of First Nations and Metis people reside, there are many social and economic obstacles to accessing mainstream programs. Until the barriers are removed, community-based training cannot address community needs and create a climate that prepares First Nations and Metis leaders to pursue professional training.

4. First Nations and Metis professionals can contribute to human resources development in their communities. Having them train others in their own communities should be part of a leadership development plan.

5. First Nations and Metis people are redefining professionalism, so that it is more holistic, more grounded in their experience and more relevant to their circumstances. Much of their knowledge and experience cannot be learned in formal education, although, as noted earlier, some progress is being made in this area. To preserve and increase their knowledge and practice, they must take part in developing and transmitting knowledge.

6. Centralized education cannot take into account the many needs and opportunities at the community level. In fact, the quality of First Nations and Metis education will depend significantly on using knowledge and expertise from the community level. Enabling communities to help design education programs will improve those programs.

The education that First Nations and Metis people control can contribute in a big way to meeting the needs of their communities. Over the coming years, we foresee their education institutions evolving alongside other self-government structures. However, we feel more must be done now to respond to these needs. The communities can best decide how to deal with the situation.

> **I think that who knows better what's happening in the community and what might be some solutions to fixing the community than community members themselves.** (Speaker, Governance & Community Development Roundtable)

This Commission believes in a flexible approach to meeting the training needs identified by First Nations and Metis communities. The approach should also reward co-operation among their organizations and governments, and between First Nations, Metis, and non-Aboriginal institutions. If First Nations and Metis communities in a region find benefits in collaboration, then their approaches should be flexible enough to take advantage of collaboration.

> **Agencies in the same field should be encouraged toward partnering and not competing for the same resources, so the youth will feel that these resources are actually about them instead of just government resources and dollars.** (Speaker, Crime Prevention Roundtable)

Finally, traditional knowledge should be preserved and, where possible, applied to today's justice problems. There are many issues that will have to be resolved. These are mainly the responsibility of First Nations and Metis healers and communities. As First Nations and the Metis Nation take on the planning and delivery of justice services, it will fall to them to decide the place of traditional practices. There is a role for governments. In the short-term, governments should fund the preservation of traditional knowledge. In the long-term, governments must create the financing and decision-making for First Nations and Metis justice services that incorporate traditional practices.

Recommendation 1.6

This Commission recommends that the governments of Canada and Saskatchewan, justice and health authorities, and traditional practitioners co-operate to protect and extend traditional justice and healing practices, and explore their application to contemporary First Nations and Metis community concerns.

There have been some important developments in these areas in recent years. But we believe more effort is needed to increase understanding and respect, and to safeguard the traditional knowledge and practices that are so vital to the well-being of First Nations and Metis people.

CONCLUSION

> **So you definitely need a champion [for change] or a leader in the community to push the vision.** (Speaker, Governance & Community Development Roundtable)

Improving First Nations and Metis leadership is necessary for changing services in ways we have outlined in our report. Leadership development is one of the most important ways to increase the ability of First Nations and Metis communities and Nations to deal with pressing community needs. It is clear to us that more services imposed by outside agencies will not bring the desired outcomes.

There is little information about First Nations and Metis leadership, but what is available shows dangerous shortages and major differences with mainstream society. While such information should be collected and while a complete plan to develop First Nations and Metis leadership should be created, these activities should not get in the way of immediately increasing the number of First Nations and Metis people involved in designing and providing justice services.

Education institutions must train more First Nations and Metis students and they must make this training more relevant. Students must also be helped to take advantage of new opportunities. Mainstream institutions must provide support. There is also a more important role for First Nations and Metis organizations. Formal courses of study are needed. More friendly community-based ways of training are also required. Programs that have already proved their value must be expanded and copied. Other institutions must also expand opportunities for First Nations and Metis students. First Nations and Metis people must have the opportunity to pursue professional studies. It is also important that traditional knowledge and practices be preserved and increased.

The justice conditions faced by First Nations and Metis people in Saskatchewan today are both a crisis and a tragedy. Yet, no amount of intervention, however well intentioned, will return First Nations and Metis people to the well-being they once enjoyed. What external forces cannot bring about, however, First Nations and Metis people can achieve for themselves. Developing First Nations and Metis leadership is essential in bringing about the major improvements that are required.

2

CREATING HEALTHY, JUST, PROSPEROUS AND SAFE COMMUNITIES IN SASKATCHEWAN

CREATING HEALTHY, JUST, PROSPEROUS AND SAFE COMMUNITIES IN SASKATCHEWAN

INTRODUCTION

Creating a healthy, just, prosperous and safe Saskatchewan requires leadership and planning. This chapter discusses the need for a plan based on inclusion, integrated services, and shared responsibility and resources. Its goal is social and economic development and promoting community. Social conditions in First Nations and Metis communities must improve to decrease crime, victimization and violence.

A youth participating at the Roundtable on Crime Prevention suggested it is time to rethink crime prevention:

> **And we did a bit of play with words here and thought that maybe we could use, instead of saying crime prevention all the time, we could maybe start talking about community promotion and create a sense of that among our youth, and from an early age, so that from – whether we're talking about the far North, in a small community, or a large city, or your part of the city, that we could be promoting our part of the communities to our children, our youth, so that that sense of pride and self-esteem is attached to that.**

Community promotion aims to improve quality of life in social and economic terms for all, especially those excluded from mainstream policy development and decision-making, such as First Nations and Metis people. The proposition is through improving the quality of life for all residents of Saskatchewan, justice reform will be realized.

To obtain justice reform, justice must be returned to the community. The idea of returning justice to the community is not new. It has been referred to as community renewal, community justice, community inclusion and community development. In the current discussion it will be referred to as community promotion. Community promotion means the community rallies together to build on the positives within, while identifying and resolving social problems. This can reduce crime, and create safe and healthy communities. For communities to take on this task and for justice to be returned to the community, positive social and economic policy must be developed.

> **In many instances I think we would have experiences of bureaucracies who want to maintain control and power over the programs that are under their various departments. It truly is our view that we cannot solve these problems on our own, that we cannot, in fact, even identify some of the challenges on our own, but that community ownership is critically important to first addressing and, secondly,**

> **solving the challenges we face, and that community capacity is critically important, too ... Now for Saskatchewan communities to be successful at addressing these issues, they have to be able to shape policies, identify issues, craft solutions, implement solutions and evaluate initiatives.** (Speaker, Saskatchewan Justice & Corrections and Public Safety Presentation)

For decades, governments have tried to create policy and programs to solve community problems without appreciating fully the many factors responsible for them. The role of government, with respect to justice and other matters, has been gradually changing. It is moving away from responses to problems such as crime and towards building partnerships with communities. Governments now recognize they cannot respond to social issues alone.

> **But I think what I've tried to do with the Meadow Lake Tribal Council and the nine communities that we work with is offer some – or listen to what they're telling us as guiding principles in developing programs. What I mean by that is it very much has to come, whatever is developed in their community or whatever the needs are in the community, it's the communities that need to drive the process around that.** (Speaker, Meadow Lake Community Dialogue)

Examples of this shift in policy are:

- The federal government's Safer Communities Initiative, which includes a "community mobilization program" to help Canadians develop crime prevention in their communities.

- The Privy Council Office's "Urban Aboriginal Strategy" introduced in 2004 to address the socio-economic needs of urban Aboriginal people. In the Budget 2004, the Government of Canada indicated their commitment to working with its partners provincial, territorial and municipal governments, service providers, First Nations and Metis organizations and others on practical solutions to the important issues of First Nations and Metis people in urban communities.

Both recognize solutions are tied to partnership with community and with those most affected. Recent Saskatchewan government approaches are based on the need for social, health, prosperity, autonomy and fiscal and political accountability. For instance, the Strategy for Metis and Off-Reserve First Nations People (MOR) is intended to deal with these needs.

The MOR Strategy was developed for Saskatchewan in response to the *Report of the Royal Commission on Aboriginal People* (1996). It is intended as a practical approach to create self-reliance for Metis and off-reserve First Nations people over the next 20 years.

Its goals are:

1. Success in primary, secondary and post-education.
2. Prepare Metis and off-reserve First Nations people for participation in a representative workforce.
3. Build a representative workforce and build First Nations and Metis economic opportunity.
4. Improve individual and community well-being.

The MOR Strategy is based on principles the Commission supports, including involving First Nations and Metis people in decision-making and the design and delivery of services.

In 2000, Canada's First Ministers signed the Early Childhood Development Agreement. It recognized the importance of children's early years and the effect these years have on their future.

A copy of the Early Childhood Development Agreement can be obtained at: http://socialunion.gc.ca/ecd/toc_e.html

Aboriginal Head Start (AHS) was implemented off-reserve in 1996 and on-reserve in 1999 and given ongoing funding to promote healthy early childhood development of First Nations children. These plans are supposed to improve conditions to ensure that all young children can be healthy, safe and secure, ready to learn, socially engaged and responsible. Supporting parents and communities is the best way to do this. Early involvement has been important in improving quality of life for each child. The Commission applauds this approach and realizes adequate resources are needed if it is to continue.

Information about the Aboriginal Head Start (AHS) program can be found at: http://www.hcsc.gc.ca/dca-dea/programs-mes/ahs_main_e.html

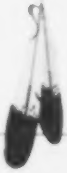
KidsFirst is a program that gives the province's children a better start in life. Funds have been provided for support of vulnerable children up to the age of five. KidsFirst draws on cooperation between government and partners such as health districts, school divisions, communities and First Nations and Metis organizations for support of vulnerable children up to the age of five and their families. The program includes a program to locate and support pregnant women with substance abuse problems to prevent fetal alcohol spectrum disorders.

Information about the KidsFirst strategy can be found at: http://www.sasked.gov.sk.ca/

A NEW CONVERSATION: COMMUNITY PROMOTION

Community promotion starts a new conversation about justice reform. This conversation is based on recognition, that government and the criminal justice system alone cannot solve the problems that lead to crime and dysfunction in a community.

> **Communities may be defined by geography, as in the case of neighbourhoods or towns, or by shared goals and experiences. Communities vary extensively in their capacity to deal with crime. Some do not have the infrastructure in**



> **place even to begin to develop crime prevention plans. Others have already formulated plans with concrete goals, objectives, and activities.** (National Crime Prevention Centre, 2004)

Community promotion means problem solving and identifying community strengths and weaknesses. The focus is on successes. It includes traditional First Nations and Metis justice by stressing First Nations and Metis values and customs. It builds relationships between community and the criminal justice system.

> **We do have our internal programs; one is the residential school healing, to work with parents and child. And we have a youth worker. I don't know how far you want me to go here, but we have a crime prevention worker, a portfolio counsellor ...** (Speaker, Cote Community Dialogue)

Improving quality of life by dealing with social and economic problems will also strike at the root causes of crime. The goal is to provide the best possible community environment in which people flourish, not solely to prevent crime.

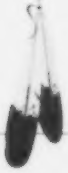
Communities want to be involved in planning the programs and policies that affect them. They are prepared to take responsibility for what is happening in their communities.

> **What we see, what we see happening around us is that, yes, we want things to go right for our people, we want things to happen in a proper, positive way. We don't want this negative energy always pulling at us, pulling us down and ruining us as First Nation people. We want to be – we want to have equality. We want to have what we had, what our ancestors had. But we cannot have that if we do not open our eyes and start fixing what's happening within our own community, our own lives.** (Elder, Treaty Four Community Dialogue)

The idea of "community renewal" or exploring local solutions requires government to become a "facilitator." The "facilitator" has an important role in strengthening the ability of a community to meet its objectives. This involves rethinking how to use community resources and encouraging better use of them in the interest of problem-solving. This approach will assist justice reform and fits well with the idea of community promotion.

As the delivery of government services shifts to communities, so too must the resources needed to carry out the responsibilities. This does not always occur. "Offloading" is the term used to describe transfer of responsibility without transfer of resources.

> **... the communities have to take that responsibility, but if you're going to download that responsibility you have to ensure that proper funding and resources are put in place.**



> **There has to be training for the people that are going to take on this task.** (Mayor of Pinehouse, Beauval Community Dialogue)

As the role of government changes, care must be taken to ensure that difficult issues, such as crime, are not overlooked. It is important that community promotion plans cover social and economic planning, and crime prevention.

A SOCIAL AND ECONOMIC POLICY PLAN OF COMMUNITY PROMOTION

Long-term social and economic policy on promoting community must cover social inclusion, poverty elimination, education, employment, housing, health, resources and urbanization.

Social Inclusion

A measure of social inclusion is the degree to which people are represented in social and economic life. Marginalized groups include many visible minorities (First Nations and Metis among them), people with disabilities, single parents, the poor and the homeless.

Marginal – the status of groups who do not have full and equal access to the cultural, economic, political and social institutions of society.

Violence, family instability, alcohol abuse and poor education can be found in many communities. Those who commit crimes often had a childhood in which they were exposed to drug and alcohol use, physical and sexual abuse, and poverty. The marginal position of many First Nations and Metis people along with loss of culture and community has contributed to offending behaviour.

According to Statistics Canada (2003a), in Saskatchewan, First Nations and Metis people represent 13.3 per cent of the population in 2001. By 2021, this will increase to 19.5 per cent. Almost 40 per cent of the First Nations and Metis population is age 14 or younger. These figures show a need to accelerate the inclusion of First Nations and Metis people in the social and economic life of this province. Accessible education, skills training and development will lead to inclusion.

Barriers exist to First Nations and Metis participation. Those most marginalized are children and youth, women and the disabled. Creating social and economic policy through First Nations and Metis eyes will help increase their participation.

Poverty Elimination

Saskatoon Communities for Children, a child poverty group, reports that the level of child poverty in Saskatchewan has been improving. These rates are based on children of ages 14 and under.

Information on Child Poverty in Canada can be found at http://www.campaign2000.ca/rc/rc03/NOV03ReportCard.pdf

According to the Saskatchewan Child Poverty Report (Hunter & Douglas, 2003):

- The rate of child poverty in Canada was 15.6 per cent for 2001.
- Saskatchewan's child poverty rate stood at 21.5 per cent in 1989, rose to a high of 24 per cent in 1994, fell to a low of 16.1 per cent in 1999 and now sits at 17.6 per cent (42,000) for 2001.

- Among First Nations children of ages 0 to 14 living off-reserve, the incidence of poverty is 55.9 per cent, with the majority of those children living in Saskatchewan's urban centres.

- The poverty rate for Metis children in Saskatchewan ages 0 to 14 is 36 per cent.

These rates describe a situation where the basic needs for food and shelter cannot be met. Difficulties obtaining food and shelter are constant for the poor in Saskatchewan. First Nations and Metis children are especially helpless.

The Executive Director of the Saskatoon Food Bank, Bob Pringle, reported:

> **Today, 82 per cent of our clients are on social assistance as compared to 50 per cent five years ago. The biggest increase in users has been single moms, two-parent families, seniors and students. This is the fourth year we've given hampers to university and SIAST students; we gave 600 to SIAST students in 2003 and 150 to U of S Students. In 2003, 1,850 Christmas hampers were handed out.**

Several recent changes have helped people on social assistance enter the workforce. A recent report by the Canadian Council on Social Development (Jackson, 2001) finds these changes have reduced both the rate and depth of poverty among Saskatchewan families. The report says that while working poor were helped, those on social assistance were worse off.

The Saskatchewan government can further reduce poverty by increasing social assistance to families with children.

Education

The value of an education cannot be stressed too much. There is general agreement that education is tied to social and economic inclusion of First Nations and Metis people. The number of First Nations and Metis people with a higher education has increased. Large numbers of First Nations and Metis youth are found among those not completing school.

- About 50 per cent of self-declared Aboriginal students who reach Grade 10 go on to complete Grade 12. This compares to an 80 per cent rate for the overall Grade 10 population that completes Grade 12. (Sask. Learning, 2003)

- Credits earned (the average number of credits a year earned by Grade 10-12 students) is lower for Aboriginal students – about six credits compared to about eight for all students in provincial schools. (Sask. Learning, 2003)

Funds from the First Nations for post-secondary education for First Nation students is a concern that requires immediate attention. The First Nations have been unable to meet the demands of the increased tuition and living costs of their students. There are increasing numbers of First Nation students applying to their bands for post-secondary funding. Although funds are limited here as well, First Nations students can also apply to the Provincial Student Financial Assistance program. Metis students can apply for post-secondary certificate or diploma training funding through the Metis Employment and Training of Saskatchewan Inc. The provincial student financial assistance program is also an alternative for post-secondary funding.

Youth crime is often linked to not attending school. Efforts are needed to encourage youth not in school to resume their education in order to achieve employment.

> **It is clear that the status quo does not fully address the human capital needs of Aboriginal youth, which is problematic, given the importance of Aboriginal youth to the future Canadian economy. Strategies to ensuring Aboriginal youth stay in school have to focus on what works. This is accomplished by tapping into the expertise of the individuals directly involved.** (Brunnen, 2004)

At a meeting with Elders at the Office of the Treaty Commissioner, the Elders repeatedly said, "education is the key".

There is a strong belief that education plays an important role in improving quality of life. A December 2002 report by EKOS Research about First Nations on-reserve said lack of education was the most important problem facing First Nations youth. The key reasons given for not getting post-secondary education were financial barriers, lack of interest, lack of qualifications, distance to post-secondary institutions and difficulty living outside First Nations communities.

Employment

Future labour needs in Saskatchewan make it important that First Nations and Metis people have the support they need to succeed in school so they can take part in Saskatchewan's economy.

Becoming part of the labour force is one way of social inclusion. Government can help to build partnerships between communities and employers.

> **But what the CDC (Community Development Corporation) is, is a community, the results of the community's efforts. That's what it is. The community decided many, many years ago, before I ever came to La Loche, that they wanted things**

Metis students registered in the SUNTEP are eligible for tuition and course cost sponsorship.

The La Loche Community Development Corporation (LLCDC) provides a range of community development and community-based services that are offered to the village of La Loche, the Clearwater River Dene Nation, Descharme Lake and Garson Lake. The LLCDC coordinates and administers a number of justice services in the area, such as community justice, victim services, fine option, youth intervention, crime prevention and family violence prevention programs, as well as a Saskatchewan Aboriginal Courtworker Program and court translation services. The operation of the LLCDC at the community level allows these programs to work in a cooperative atmosphere that can meet all client needs. (Sask. Justice and Corrections and Public Safety, 2004, page 25)

> **to be different, they wanted to do the community business differently. And the result is now a million-dollar organization that supports and enhances community opportunities. And it encompasses programs like prenatal nutrition, all the way up to restorative justice and Alternative Measures and all of the agencies in between.**
> (Speaker, La Loche Community Dialogue)

The MOR Strategy, the "Framework for Cooperation" and the Aboriginal Employment Development Program (AEDP) recognize the importance of employment. The AEDP program had signed on 53 partners as of March 2004.

At present, the Aboriginal unemployment rate is four times higher than the non-Aboriginal unemployment rate. Metis people were able to find more jobs in the past decade. However, First Nations people on reserves were not so fortunate.

Housing

An in-depth look at *Urban First Nations People Without Homes in Saskatchewan* was done by Saskatchewan Indian Institute of Technologies in 2000.

Housing is important for quality of life for both family and community. Housing keeps children in school and reduces violence. All levels of government recognize it as something that must be dealt with. The home one lives in is more than a shelter or investment. Housing should be both affordable and safe.

The lack of housing in Northern Saskatchewan is of particular concern. The Commission was informed that sometimes there are "three families living in one dwelling." Inadequate housing has been linked to child welfare problems and longer stays for children in foster care, as children cannot be returned home if parents have inadequate housing.

According to the April 2003 Auditor General of Canada's report, poor housing on reserves has a negative effect on the health, education, and overall social conditions of First Nations individuals and communities. There is still a critical shortage of adequate housing to accommodate a young and growing population. Indian and Northern Affairs Canada and Canada Mortgage and Housing Corporation (CMHC) are the two main federal organizations that assist First Nations in meeting their on-reserve housing needs.

The Auditor General went on to say that the unacceptable housing situation on reserves is a long-standing problem. There is a shortage of 8,500 houses, which is forecasted to increase by about 2,000 units per year over the next 10 years. Further, about 44 per cent of the 89,000 existing houses require renovations. It has been the subject of numerous studies over the last 20 years, including an important study by the Royal Commission on Aboriginal People in 1996.

Women and children who are victims of family violence are unable to escape due to a lack of affordable housing. The Auditor General's report indicated that the high levels of substandard housing and overcrowding are expected to continue. Housing on reserves is in a bad state and must be dealt with if the goal of a "healthy, just, prosperous and safe community" is to result.

The Auditor General's report recommended that Indian and Northern Affairs Canada, Canada Mortgage and Housing Corporation, and Health Canada, in consultation with First Nations, should develop a comprehensive strategy and action plan to address the problem of mould on reserves as the mould contamination has been identified as a serious and growing health and safety problem for several years.

Saskatchewan has started a number of programs to deal with housing. The federal Human Resource Development Corporation (HRDC) recognizes the need for adequate housing and has started working on this problem.

Fetal Alcohol Spectrum Disorders (FASD)

First Nations and Metis communities face a number of health problems such as diabetes, HIV, fetal alcohol spectrum disorders (FASD), mental illness, and alcohol, drug and substance addiction. The health statistics for First Nations and Metis people are unacceptable. Life expectancy remains at 6.5 years shorter for Aboriginal women and seven years shorter for Aboriginal men below that of all Canadians. (Canadian Centre for Justice Statistics, 2000)

There is growing evidence that a significant number of adult and young offenders were affected by alcohol before they were born. This is often described as pre-natal exposure to alcohol that results in fetal alcohol spectrum disorders (FASD). FASD is the leading cause of cognitive disabilities. Because brain damage occurs when the child is in the womb, the result is not merely a matter of delayed development. It is permanent and cannot be reversed.

While First Nations and Metis people are not the only ones to suffer from FASD, their numbers are above average. Marginalization, which often contributes to substance abuse, results in more cases of FASD. Substance abuse while pregnant leads to organic brain impairment in the child. Persons with FASD often behave impulsively, leading them into conflict with the law.

The actual number of people with FASD is unknown. Estimates indicate that a large number of First Nations and Metis people in Canada are affected by alcoholism, either by being addicted themselves or from dealing with the addiction of a close family member. (See *Fetal Alcohol Spectrum Disorders and the Justice System* in Volume 2.)

FASD is 100 per cent preventable. Health Canada says FASD can be prevented by avoiding alcohol and other drugs during pregnancy and preventing conception if these substances are used.

Preventing FASD requires long-term planning. There are community-based organizations that address FASD, including the Saskatchewan Institute on the Prevention of Handicaps and a number of communities that recognize the problem and want to deal with it. The Women's Commission of the Prince Albert Grand Council initiated community services to their FASD members. They also provide community-based initiatives to screen and assess children who may have the disorder in order to begin the life long planning that will need to take place. There are community-based responses that have potential if they are adequately resourced.

- Prince Albert Grand Council operates four band-based Early Childhood Intervention Programs. There is concern that there will soon be no funding.
- KidsFirst operates a similar screening and assessment program off-reserve.
- The Northern Inter-Tribal Health Authority member partners consist of the Lac La Ronge Indian band, Peter Ballantyne Cree Nation, Meadow Lake Tribal Council and the Prince Albert Grand Council. They are working to develop an integrated multidisciplinary approach that builds upon community capacity to address the issues surrounding FASD.

These communities have strengths, skills and knowledge to address FASD. These strengths include wellness, education, family, parenting, traditional knowledge, Elders and mentors, interagency co-operation, early childhood education, land and leadership. It is recognized that building community assets combined with collaborative interagency approaches can assist in the overall health and social well-being of the entire community.

Identifying and assessing people with FASD must take place. Assessing people appearing before the courts is important to ensure that those with cognitive disabilities such as FASD have the full protection of the law. Assessments ideally require a team of, among others, a physician and a psychologist. Such assessments in Saskatchewan are limited and this has probably resulted in keeping disabled persons in the criminal justice system. Schools require training in order to recognize the disability, to refer for assessment and provide appropriate education. Police also require awareness training so that children under twelve with suspected FASD are referred to agencies where they receive the services they need to prevent them entering the young offender system. And, police and prosecutors need greater awareness of FASD in order to respond appropriately to those who commit crimes in terms of the use of discretion.

The offending pattern for persons with FASD is unique. Neuropsychologist Dr. Jo Nanson stated: "Show me a charge sheet that is full of breaches, impulsive acts and absent of fraud and you will probably have an FASD offender."

These youth remain unfit to stand trial as long as their charges are outstanding. However, the Attorney General may direct a stay of the charges at any time. While these youth with FASD may always have a cognitive disability, they may not always be unfit to stand trial or under the jurisdiction of the Review Board. Therefore, educated care and due diligence needs to be exercised to ensure that accused have the capacity to understand the charges before they are laid unless the Attorney General directs a stay of the charges, which can occur at any time (Saskatchewan Health, 2004).

The Saskatchewan Institute on Prevention of Handicaps is a non-profit organization that helps the people of Saskatchewan learn to prevent handicapping conditions in children. Formed in 1980, the Prevention Institute is the only one of its kind in Canada. The Prevention Institute is working to create province-wide awareness of preventative measures to reduce the incidence of handicapping conditions in children. Our goal is to ensure that all children have the best possible chance at a healthy life. For more information you can go to their website at http://www.preventioninstitute.sk.ca/fetal.html (Saskatchewan Institute on Prevention of Handicaps)

FASD has a tremendous impact on the Courts in terms of the manner in which those with FASD can process information. Judge Sheila Whelan of the Provincial Court of Saskatchewan commented that persons with FASD often make poor witnesses due to their disability. For instance, there may be a need for the Court to take special care to ensure that questions posed are understandable. Sentencing poses further concerns since people with FASD may readily agree to terms and conditions without the capacity to comply. Persons with FASD are detained by the courts as there is nowhere for them to reside except in the environments which in many cases contributed to their offending behaviour. Structured living environments are required if persons with FASD are to be dealt with outside of the criminal justice system.

The creation of a Therapeutic Court has been suggested as one solution. This court would have the knowledge, training and the resources available to respond. (The creation of therapeutic courts was recommended in the Commission's third interim report and is addressed in greater detail in Chapter 6 - Justice Institutions.)

The philosophy of corrections, both old and new, poses problems when applied to those with FASD since the main objective of incarceration is deterrence to correct behaviour. However, one must have cognitive capacity to correct the behaviour. People with FASD are impulsive, do not learn from experience and cannot transfer learning from one situation to another. They do not think their actions through. Therefore they cannot benefit from incarceration or programs as they are now structured. The more recent philosophy of restorative justice requires a person to be able to understand the harm caused and have an ability to feel remorse. Persons with FASD feel remorse but it is short-lived. A person with FASD cannot be treated. They can be improved by treating secondary disabilities such as mental health and alcohol and drug problems.

> **One of the big things in regards to all of this, and I really feel that this has to be a health issue as well, because we have many FAE, FAS children who end up in the justice system and we have no other place for them. They get into trouble. There's no resources at school, there's no resources at Health. There's no resources on the reserve to deal with these problems. No one-on-one for the schools, their budgets are always being cut back, and Justice seems to be the catchall.**
>
> **So for myself, that's one of the issues, like I would really like the Commission to put in its report that we need more linkage between Health and Justice and Education in regards to FAE and FAS children. As all of us know, most of these kids are First Nations because we've had a chronic alcohol problem in our communities for years as a way of dealing with issues that we didn't want to deal with, we've been covering them up and drowning them. So for myself, that's one thing that I would really, really like to have more work and more time to be spent on FAS and FAE children that we have to deal with.** (Speaker, Stakeholders Roundtable)

Any FASD management strategy must be long term and multi-disciplinary. FASD has lifelong implications; therefore long-term individual service plans are required for children, youth, and adults. The strategy must include a full range of services: prevention, assessment, education, employment, independent living, life skills training and parental assistance. At present this range of services does not exist in all communities or in sufficient depth.

The Commission is aware that the Government of Saskatchewan has conducted community consultations and is in the process of creating an FASD framework, which hopefully, will provide a full range of services to meet the needs of persons with FASD.

There is little doubt that this undertaking will be costly. However, the cost of continuing to ignore the problem is greater. (See Chapter 9 - Aboriginal Justice in Saskatchewan 2000-2021: The Benefits of Change for an analysis on the costs of incarcerating persons with fetal alcohol spectrum disorders and other mental health disorders.) A recent British Columbia judgement awarded autistic persons with $45,000 per year for support services. The average yearly cost of processing an FASD person through the criminal justice system culminating in incarceration in the federal system is $108,277 for a male and $155,589 for a female.

Elders suggest a cultural approach to dealing with FASD, through restoring the traditional honour of womanhood and procreation:

> **... the young girls should be taught about womanhood. The rites of passage ceremony has been neglected since the first institutionalized children in residential school ... a Mohawk woman, works in Edmonton in the Red Room Healing Society in a community centre in the Beverly district. She had women, grown women, go through the ceremony, even though they were grown up. The women told me, the upper lift and the hurt for not having had the experience of that ceremony; they felt good about it when the ceremony was over. There was something lacking in them without realizing, but their souls felt it. Even though it was done later in life it had a positive effect. These ceremonies, rites of passage, have come back in our communities. They should come back in our communities for our Grade 5 and 6 that are 10, 11 and 12 year olds. They are in their tender years, their vulnerable years. They will learn their duties as upcoming adults in sexuality and God behold if any of us are a part of that abuse system with our young people.**

> **Whatever we do to that child we are responsible for that child's behaviour for the rest of their lives and we distort their soul, their inner being, their whole behaviour in the future is affected by what is happening to them...**(Elder, OTC Elders Dialogue)

Recommendation 2.1
This Commission recommends:

2.1.1 That the Government of Saskatchewan finance a long-term targeted fetal alcohol spectrum disorders (FASD) strategy that includes prevention, intervention and follow-up to address the lifelong disabilities caused by alcohol use and abuse.

2.1.2 That the governments of Canada and Saskatchewan, Federation of Saskatchewan Indian Nations and Metis Nations - Saskatchewan collaborate on a fetal alcohol spectrum disorders awareness training program that will be delivered to all people who work with children and youth and their families, including the police, to create a level of awareness.

2.1.3 That the Saskatchewan Police College deliver a fetal alcohol spectrum disorders training module to all new recruits to provide an understanding of fetal alcohol spectrum disorders.

2.1.4 That the Government of Saskatchewan, primarily child welfare and health authorities, review the legislation and policy as it relates to the provision of services to people with fetal alcohol spectrum disorders to ensure that they are not excluded by virtue of their IQ and to ensure that support services are provided to families, in the absence of protection concerns.

Other Disabilities

The general First Nations and Metis population suffers from other disabilities that go undiagnosed and untreated. This may be particularly true of the offender population. Lack of treatment of these disabilities sometimes results in imprisonment. About 19 per cent of offenders in federal prisons are believed to suffer from some form of disability – learning, cognitive disability or mental disorder. (Correctional Service of Canada, January 2004) There are two mental health units in the federal prison system. These are located at the Saskatchewan Penitentiary in Prince Albert and the Regional Psychiatric Centre in Saskatoon. Provincial centres estimate about 18 per cent of their prisoners have major emotional needs which would benefit from psychiatric treatment, counselling or therapy. There is no mental health unit in the provincial correctional system, although some services are provided by community resources to serving offenders. There are only limited mental health services in the young offender system. (Sask. Justice and Corrections and Public Safety, 2004)

The Office of Disability Issues (ODI) was established in September 1998. This office provides leadership in the development and co-ordination of policies, programs and services across government.

For more information, contact:
The Office of Disability Issues
14th floor, 1920 Broad Street
Regina, SK S4P 3V6
TTY: (306) 787-7283
Fax 798-0364
E-mail odi@ss.gov.sk.ca

The 2001 report of the Auditor General states substance abuse in one of the seven factors contributing to criminal behaviour.

Nearly two-thirds of offenders entering federal correctional systems have drug abuse problems. In Saskatchewan, 74 per cent of adults imprisoned in 2001 self-reported they frequently abused alcohol and drugs, and suffered serious problems.

In 2001-2002, the number of people admitted to alcohol and drugs services in Saskatchewan was 20,796; of this number, 48 per cent were First Nations and Metis.
– Saskatchewan Health presentation

A dry reserve is one where the residents pass a bylaw making it illegal to possess alcohol.

There is common belief that offenders commit crimes because they choose not to follow the rules and that imprisonment will change their ways. However, people with mental disabilities are not changed by the experience of prison. These offenders often are unable to change their behaviour without help. There are people with disabilities who will continue to be imprisoned until community based mental health help is available.

The number of adult and youth offenders with mental disorders or disabilities needs to be known. Without knowing how many there are and what treatment they need, creating community based treatment will be difficult. The general belief is that a number of offenders in prison should be treated in the community. Those with mental disabilities should not be put in prison simply because other systems failed to provide help.

The Commission believes there is a need for more professional training in the criminal justice system to help recognize mental disability so that offenders can access proper treatment. For more information see Chapter 4 – Restorative Justice: Restoring Justice in Saskatchewan.

Alcohol, Drug and Substance Abuse

> **Just recently we had a workshop on drugs and drug dealers. We're trying to combat the drugs and drug dealing that's happening in our community, is what we're doing. The first workshop wasn't very successful; we've just had one so far. But we're not giving up there, we're going to continue to try and see – we had one recovering drug addict that came in and educated us on how they go about scamming the doctors and stuff like that. Just simple, little things that we overlook. But he educated us real good and we know where to go from there now.** (Speaker, Cote First Nation Community Dialogue)

The link between crime and alcohol and drugs is well known. The solutions are not simple. No single approach can deal with a community's alcohol or drug problem. There are several treatment methods: education, intervention and cutting off supply. This is what is done on dry reserves. Good results have come from programs that respect First Nations and Metis culture, involve the family in treatment and are both intense and long lasting.

According to the Prince Albert Grand Council's Annual Report for 2002, over the past 25 years, 10 First Nations Addiction Treatment Centres have been set up in Saskatchewan. There are six adult alcohol residential treatment centres, two solvent abuse programs and two outpatient programs. These programs all have a cultural element – cultural teachings and presentations by Elders.

Alcohol, drug and substance abuse must be dealt with forcefully if offences and victimization are going to be reduced in First Nations and Metis communities. No plan to improve quality of life can succeed without putting a stop to alcohol, drug and substance abuse.

Gambling

Raffles, bingo, scratch and win, lotteries, sports betting, casino games, slot machines and video lottery terminals (VLTs) are all forms of gambling. Gambling has become a part of our lives. Many of us flip a coin to see who pays for coffee, buy raffle tickets to support a charity, join a sports pool during playoffs, play bingo or VLTs, or go to the casino for entertainment. For most people, gambling is not a problem. However, for some, gambling has become their only activity and is a health issue. Saskatchewan Health provides province wide services for problem gamblers. They include coordinated education and prevention programs for individuals and communities. Outpatient counselling is also available.

The Prince Albert Grand Council has started a program to encourage responsible gaming. Community based groups are an important part of the program. We encourage such approaches.

Resources

Many service providers complained to the Commission about the enormous amount of work they had to go through in a short time to receive funding for crime prevention. The National Crime Prevention Strategy, they said, put difficult demands on communities wanting funds. Community based justice organizations said they spent more time trying to obtain money than they did on actual crime prevention. There is a need for a funding method that is more streamlined and meets the needs of both community and government.

The Canadian government established the National Crime Prevention Strategy to reduce crime and victimization by tackling crime before it happens. The national strategy is based on the principle that the surest way to reduce crime is to focus on the factors that put individuals at risk: factors like family violence, school problems, and drug abuse. The strategy provides communities with tools, knowledge and support they need to deal with the root causes of crime at the local level. The National Crime Prevention Centre (NCPC) administers the gang strategy and provides funding to many First Nations and Metis communities across Saskatchewan. An example is the gang strategy done by the Federation of Saskatchewan Indian Nations. Many Saskatchewan First Nations and Metis communities receive funding through the NCPC.

Although the program is a federal initiative, a committee that includes the province and representatives from the community, so that provincial priorities are met, vets decisions as to which projects receive funds. NCPC has recently been moved from Justice Canada to the newly created department of Public Safety and Emergency Preparedness. While the Commission is recommending that the province in partnership with communities create a long-term targeted prevention plan for Saskatchewan, NCPC will continue to be a valuable partner in meeting Canada's safe community agenda.

Problem Gambling
Help Line
1-800-306-6789

The *National Crime Prevention Strategy* aims to reduce crime and victimization by tackling crime before it happens. The approach is based on the idea that the best way to reduce crime is to deal with factors that put people at risk – family violence, school problems and drug abuse.

This approach gives communities the tools, knowledge and support to deal with the root causes of crime.
http://www.prevention.gc.ca/en/aboutus/ncpc.html
or
http://www.caledoninst.org

Recommendation 2.2
This Commission recommends that the governments of Canada and Saskatchewan streamline the funding process for crime prevention interventions in consultation with communities and provide core-funding arrangements to programs that have proven successful.

Urbanization

On January 30, 2004, the Government of Canada announced it supports urban development priorities that were identified by people in the core area of Regina. "The money will go to help address priority needs in those neighbourhoods, thus enhancing opportunities for Aboriginal youth and revitalizing that area of the city. Priorities include urban housing, youth integration programs, and community projects. It is a model that has become an example of what can truly be accomplished when everyone, all levels of government, the community and the private sector, come together to support the vision of the community," said Federal Minister of Urban Aboriginal Affairs, Denis Coderre.

In recent years cities have grown in importance in the economic and social landscape of Saskatchewan. City governments play an important role in public policy. They must be partners with First Nations and Metis people in new social and economic policy plans. "Aboriginal people are an essential component of future labour force development and the shape of urban cultures," according to Graham and Peters, authors of *Aboriginal Communities and Urban Sustainability*.

About 50 per cent of all First Nations people live in cities and towns. The percentage of Metis people is closer to 70 per cent. (Statistics Canada, 2003a) There is much discussion over who is responsible for providing services. The Royal Commission on Aboriginal Peoples said this debate was a barrier to improving quality of life for urban Aboriginal communities.

> **That Canada, Saskatchewan and Saskatchewan First Nations enter into a social union framework agreement, like the agreement that endorses a shared policy agenda, provides the foundation for subject-specific matters, as an interim measure until such time as the interim agreement is displaced by a new governance process in justice.** (Speaker, FSIN Health and Social Development presentation)

Social and economic policy must first make sure First Nations and Metis people receive services to which they are entitled. While the Commission sees a need to continue discussions on self-government and self-determination, the jurisdictional confusion that urban First Nations and Metis people face must be cleared up. Clearly, more research is needed to understand the problems facing urban First Nations and Metis communities.

Recommendation 2.3

This Commission recommends that the Government of Canada, in consultation with the other orders of government, develop Saskatchewan First Nations and Metis Peoples Social and Economic Policy Plans focused on improving quality of life for First Nations and Metis people.

Further, that the Implementation Office be responsible for monitoring and reporting on progress.

The plans must develop policy through taking into consideration the practices and customs of First Nations and Metis people including, but not limited to, the following goals:

- **eliminate poverty;**
- **improve educational attainment;**
- **increase employment;**
- **provide appropriate housing;**
- **promote health especially in the areas of addictions, including fetal alcohol spectrum disorders;**
- **transfer of resources to the community; and**
- **respond to the realities of urbanization.**

In addition to developing long-term Saskatchewan First Nations and Metis Peoples Social and Economic Policy Plans there is also an urgent need to begin targeted crime prevention.

CRIME PREVENTION TO DATE

Although there have been advances in education, health and governance in many Saskatchewan First Nations and Metis communities, the rates of sexual assault, family violence, child sexual abuse and other forms of violence remain high. The Saskatchewan crime rate is almost double the national average. Crime is a serious concern to those who spoke to the Commission.

Both Canada and Saskatchewan respond to crime mainly through enforcement, punishment and imprisonment. Canada incarcerates 20.6 per 10,000 youth, Saskatchewan incarcerates 35.3 per 10,000 youth according to Juristat, Vol 24 No. 3. (Marinelli, 2004) The Metis Family & Community Justice Services Inc. said: "Prevention and intervention activities relating to crime and offending is a reasonable and healthier way of dealing with crime" than enforcement, punishment and imprisonment.

Professor Rick Linden defines crime prevention in his paper *Crime Prevention in Aboriginal Communities* as "the anticipation, recognition and appraisal of a crime risk and the initiation of some action to reduce that risk." A participant at the Crime Prevention Roundtable defined it as "any intervention that enables individuals to make choices, caring for people with judgment and rebuilding communities."

To read more on Crime Prevention you can obtain Prof. Rick Linden's paper at http://www.ajic.mb.ca/crime.pdf

This report was prepared to provide information to help the Aboriginal Justice Inquiry Implementation Commission make recommendations.

Regardless of definitions, crime prevention, as the Federation of Saskatchewan Indian Nations said in its presentation, must include "working collaboratively with First Nations to respect their culture, to respect their jurisdiction, to respect their values, their languages."

A number of crime prevention methods have been used. First attempts were mainly police-based. Then came crime prevention by reducing opportunity. This uses security systems, locks and bars. More recently, lighting and open spaces in parks and parking lots have been used. Municipal planners use environmental design to prevent crime.

One of the strongest vehicles for preventing crime is community based policing. Here the police work with the community. Police are viewed as vital to community safety and their partnership is welcomed. For more information on this form of policing see Chapter 5 – Policing.

Social development often reduces the reasons for criminal behaviour. This approach to crime prevention is based on the belief that crime is usually caused by poor social conditions and is a sign of other problems. Some factors associated with criminal behaviour are lack of social involvement, family or peer participation in crime, lack of employment skills, substance and alcohol abuse, inadequate education, poverty and family dysfunction. (Human Services Integration Forum presentation)

Crime prevention is community building. Some projects funded throughout Saskatchewan are teaching children cultural values (Ahtakakoop Cree Nation), researching gangs (Federation of Saskatchewan Indian Nations), creating safe youth environments (Green Lake), and city mentorship and literacy programs.

Saskatchewan Justice helps communities to deliver culturally sensitive justice services that promote community responses to crime, encourage family participation, respond to victims' needs and hold offenders accountable. (Sask. Justice 2000-2001 Annual Report)

Many projects report not having enough funding and not having a system to measure results. In spite of this, the available funds did allow communities to look at ways of making their communities safer. Longer term funding with increased funds to measure results is requested.

WHAT WORKS?

The United Nations Commission on Crime Prevention and Criminal Justice (2002) suggests governments invest in programs to reduce crime and its costs to victims and the public. They suggest that crime prevention plans need:

The entire report is available at http://www.unodc.org/pdf/crime/commissions/11comm/14e.pdf

- Clear goals and a balance between prevention and criminal justice.
- All levels of government responsible for creating programs.
- Partnerships among agencies responsible for justice, policing, school and families.
- Public participation and raised awareness with senior officials.

Successful crime prevention programs cannot always be transferred from one community to another. There are some clear guidelines developed by the United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), regarding people living in First Nations communities. These guidelines call for research and evaluation that are locally relevant. Community members must be involved in decision-making and respect must be shown for local customs, traditions, values and history. (Funk & Wyrick, 2001)

Following is a discussion of what successful crime prevention programs must contain:

1. Target Specific Risks

The consistent message in the literature is that crime prevention must be designed for specific risks.

A successful example is Regina's Auto Theft Strategy, of which HEAT is one component, which targeted youth who were stealing cars. The program identified the youth, found out what they needed and provided thorough supervision. The result was a dramatic drop in car thefts.

> **The Regina auto theft strategy has been effective in implementing a number of innovative approaches and techniques to address the issue of young offender auto theft. It is also evident that the Regina auto theft strategy was developed in an attempt to respond to the specific needs of the community, at-risk youth and young offenders in Regina. A review of the strategy indicates a number of specific positive elements.** (Speaker, Regina Friendship Centre Community Dialogue)

2. Community Based Enrichment Programs

Community based enrichment programs have also been successful. The most successful provide supervision during times of greatest risk. They contain activities that enrich social behaviour. The goal is to develop and maintain social skills and beliefs.

Programs for gangs must be comprehensive because youth join gangs to fill many needs. If several services are offered they must be co-ordinated. For example, a weeklong canoe trip may be an excellent experience, but is unlikely to overcome years of antisocial learning from a gang. Well-financed, wide-ranging programs make a difference. It is important for youth to have input into program development. Gangs are dealt with in more detail later in this chapter.

For more information
contact OJJDP at
810-7th St NW
Washington, D.C. 20531
(202) 307-5911
http://ojjdp.ncjrs.org

3. Early Intervention

Those who made presentations to the Commission spoke of the promise of youth and the need to start at problems early. Research shows early intervention improves children's success in development and education, improves the functioning of the family and provides long-term benefits for society. Programs based on the idea that early solutions reduce delinquency or conflict with the law have been successful.

4. Arts, Culture and Recreation

> **Art, music, drama are powerful pathways to replenishing, reigniting hope.** (Jevne, 2004)

Sport, art and recreation provide healthy alternatives to drinking and drug use, commonly associated with crime. Well-designed recreation programs increase confidence, social skills and school success in children, youth and adults, says the Canadian Council on Social Development.

In a paper prepared for the Manitoba Justice Inquiry, Professor Rick Linden warned, "While many people assume that recreation programs will prevent crime, there is surprisingly little evidence to support this belief. In fact the Congressional Review pointed out that recreation programs may actually increase criminality if high risk youth are allowed to mix with low-risk youth without a strong intervention to establish positive group norms."

Some examples of successful youth programs are Saskatchewan Native Theatre, Prince Albert's Kamamakus and Regina's Street Culture Kidz.

First Nations and Metis participation in sport, culture and recreation has recently increased. There is a determined effort to create opportunities for First Nations, Metis and non-Aboriginal to "play" together. Playing together is a way to establish healthy relationships and reduce racism. Activities such as story telling and drama honour cultural diversity and heritage.

The Commission saw what young people can do through theatre and heard directly from them the difference it makes in their lives. The Commission also heard about programs that use theatre, clowning and murals to increase self-esteem, social interaction and life skills training.

A proactive targeted plan that is community based to guide the development and implementation of crime prevention programs and strategies is required. This strategy will build partnerships, advance public education and awareness of best practices of community safety through crime prevention.

Recommendation 2.4

This Commission recommends that the Government of Saskatchewan, in partnership with First Nations and Metis communities, design a proactive targeted Saskatchewan Crime Prevention Strategy by April 1, 2005.

THE SASKATCHEWAN CRIME PREVENTION STRATEGY

Necessary components of the Saskatchewan Crime Prevention Strategy should include:

- Target specific risk factors.
- Community based early enrichment programs.
- Family based intervention.
- Identify strengths of individuals and family, and find solutions in the community.
- Collaboration among existing service providers that deal with offending and victimizing behaviour.
- Recreation, arts and culture.
- Initiatives that improve the lives of at-risk children and youth.
- Sufficient funds (equivalent to costs of keeping someone at risk in the criminal justice system).

Recommendation 2.5
This Commission recommends that the Government of Saskatchewan divert funds currently spent on reacting to crime in the criminal justice system, to proactive targeted community based prevention projects.

One goal of the Saskatchewan Crime Prevention Strategy must be to address the disproportionate number of First Nations and Metis people in the criminal justice system.

Before working to prevent crime and reduce the number of First Nations and Metis people in the criminal justice system, it is necessary to understand why people are in the system in the first place. There are two popular explanations.

The first involves the relationship between crime and unfavourable social and economic conditions in First Nations and Metis communities. When approaches are developed to improve these conditions, they are referred to as "crime prevention through social development."

This can be taken one step further. The social and economic disadvantages can be viewed as the results of colonization. Such results are linked to the practices and harms caused by European settlement. Self-government and self-determination are then seen as part of the solution to the number of First Nations and Metis people in the justice system.

The second explanation examines the inability of the present justice system to respond properly to First Nations and Metis people. This view speaks to a number of shortcomings in the system, such as the lack of understanding of the culture and needs of First Nations and Metis people. Other problems are the absence of local community based services and the insufficient number of First Nations and Metis people working in the justice system.

Both explanations lead to colonization as being at the root of the problem. Colonization denied First Nations self-determination and caused exclusion from mainstream society. Living in poverty without opportunity for employment, people turn to alcohol, putting their families in crisis and despair.

> **Few behavioural investigators have explored, experimentally, the issues of family interactions, relationships and social systems. This is of particular pertinence to Aboriginal families who have experienced varying degrees of fragmentation induced by colonization. This process has contributed to the depletion of vital resources, impaired parenting skills and disrupted psychosocial development of individuals. Also many children and youth were not only placed at serious risk but deprived also of the essential family nourishment and support.** (Samuelson & Robertson, 2000)

Knowing about the influence of colonization on families, relationships and social systems is important for understanding the numbers of First Nations and Metis people in the criminal justice system. Racism is also an important component in the interaction between the criminal justice system and First Nations and Metis people. For more information see Chapter 7 – Eliminating Racism: Creating Healthy Relationships in Saskatchewan.

In considering this situation, one must ask why it is that First Nations and Metis people are more often held without release before trial and arrested for minor infractions or system generated offences, as opposed to other groups. It has been suggested the numbers of First Nations and Metis people in the system are a result of the way the system operates. If we are to change the outcome, the rules or guidelines of the criminal justice system must change. See Chapter 6 – Justice Institutions for more information on how changes can occur.

> **The Saskatchewan criminal justice system is engaged in responding to socially harmful conduct that, at least with respect to Aboriginal offenders, stems largely from a deep and pervasive connection of social deprivation and social need. Hence a system that is oriented toward seeing crime as coming from personal choices to act deviantly and destructively runs the risk of never adequately addressing the criminogenic social condition that lies behind offending.** (John Whyte, Saskatchewan Institute of Public Policy)

Green and Healy in *Tough on Kids* (2003) speak to further problems with the present system. They quote an interview between the Honourable Chief Justice Edward Bayda, Court of Appeal for Saskatchewan, and CBC Radio. The Chief Justice expressed his frustration in sentencing a young offender whom he described as having no job, no education, no material goods to speak of, no real sense of his own dignity or worth, alcoholic parents, a violent upbringing, and a life without direction and purpose. The Chief Justice wondered what the outcome might have been if he had power to sentence this young man to the guidance of the Elders rather than to jail. A system that could do what is right for such a young man is needed.

Dr. Ronna Jevne, in a paper prepared for the Commission, *Magnifying Hope: Shrinking Hopelessness*, talks about the high number of offenders from First Nations and Metis populations who emerge from conditions of hopelessness. "The insidious erosion of humanness is a major factor in hopelessness. Many of these are cultural and systemic factors. What we do know is, that anytime a person or a collective of persons are silenced, one of two things happens. They get angry and/or despairing, both of which are understandable responses to a life situation that has foreclosed on possibility." Communities involved in removing social injustices give hope to victims. Disadvantage and breakdown in relationships are barriers to success and bring about crime.

Dr. Carol LaPrairie, a principal researcher for Justice Canada, has looked for causes for the high number of First Nations and Metis people in prisons. She suggests crime prevention must be better targeted to decrease the number of imprisoned First Nations and Metis people. LaPrairie states in her paper entitled *Dimensions of Aboriginal Over-Representation in Correctional Institutions and Implications for Crime Prevention (1992)*, that "for too long, the response to the over-representation phenomenon has been broad-based programming such as improving access to court workers, cultural sensitivity training etc. in the hope that these initiatives would reduce the numbers of Aboriginal people entering correctional institutions."

Her research shows it may be possible to target geographic areas and particular groups of First Nations and Metis people who are most likely to commit crime and end up in prison. She feels there is an abundance of education, employment and job creation for First Nations and Metis people. However, these benefits may not be sufficiently related to criminal justice issues or to the First Nations and Metis groups most vulnerable to make a difference. LaPrairie believes that those in charge must target their programs to prevent crime at the groups most at risk.

The task for all governments, including First Nations and Metis governments, is to improve life chances of those most likely to commit crime. It is necessary to identify those people and follow up with a targeted response that is community based.

Social and economic disadvantage can have a big impact. An improved condition along with recognition of the right of First Nations and Metis people to self-determination is the goal of justice reform.

YOUTH IN CONFLICT WITH THE LAW

The Commission was asked to deal with concerns about youth in conflict with the law. A youth in conflict with the law may be someone in a young offender facility or one who may be known to authorities but not convicted of a crime. An at-risk youth is one who may offend in the future. "At risk" can be applied to youth not in school, involved in gangs or living on the street.

Communities are struggling to find ways to reduce the number of youth engaged in criminal and other anti-social activity. Communities understand this is a complex problem and that there is no one solution.

> **And that was one of my concerns is that we had never given up our inherent right over our youth. And somewhere along the way we lost that inherent right. And at the same time, we lost our traditional ways of dealing with our young people, and we need to get back to some of those ways. We need to do some research.** (Speaker, Montreal Lake Community Dialogue)

It is widely believed that many of today's First Nations and Metis families are in crisis and offer little support to their children. Many youth in dialogues with the Commission spoke of the impact of their parents' alcoholism on their lives. They spoke of the lack of money preventing them from participating in sports. The only school graduation they expected was "to the streets." Many of the youth in young offender facilities felt nothing worked for them, not family, not school, not recreation. Some of these youth feared that things would not be different upon their release.

There are a few persistent offenders. Estimates are that fewer than five per cent of youth commit two-thirds of the crime. Therefore, effective programs targeted at persistent offenders will prevent much of the crime.

In 2000-2001, 75 per cent of youth in custody in Saskatchewan were First Nations and Metis. (Sask. Justice, 2004)

Who are these youth?

Saskatchewan's youth in conflict with the law are mainly First Nations and Metis. They are likely to have been born into poverty and suffer from health problems and maltreatment. They probably have been put into the child welfare system and ended up in custody. Many of these youth had childhoods with difficult behaviours and poor social skills. They came from families with poor supervision and discipline and substance abuse. Their parents were usually unemployed. They experienced violence, abuse and neglect. They failed at school. They are more likely to have grown up in areas of high poverty with poor housing, neighbourhood violence and crime.

For most young people, behaviour that brings them into conflict with the law is part of growing up, of testing limits, of taking risks or of asserting independence. It may also point to boredom and the absence of anything better to do. As the

Canadian Training Institute says in *Youth Justice in Canada: a Resource Manual*, occasional offending by young people can be reduced by helping them deal with stress associated with the turmoil of growing up.

The Present Approach

The operation of the youth justice system is much more than a matter of law. The forces that lead to the reliance on the youth justice system and custody are a complex mixture of legal influences, social and demographic conditions, and practices and resources in education, health, child welfare and the criminal justice system. While there has been a significant focus on the law affecting the youth justice system, the collective impact of these factors has sustained a high number of reported youth crime and a high volume of youth being charged and sentenced including a high per capita use of custody. (*Saskatchewan Youth Services Model: Reducing Reliance on the Youth Justice System*, Government of Saskatchewan, 2000)

Saskatchewan locks up more of its youth than any other province (35.3 per 10,000 youth) but lower than the Northwest Territories (132.9) and slightly lower than Nunavut (37.6). Saskatchewan's rate is almost four times that of Quebec. Professors A. Doob and J.B. Sprott of the University of Toronto have written about this in the Canadian Journal of Criminology. High imprisonment rates, they suggest, are the result of how the local culture deals with youth. They argue most young people commit crimes. Most young people in Canada, do numerous things that could land them in youth court, if they were caught and charged. The difference among provinces is thought to reflect the decisions of those running the youth justice system.

The 2001-02 Canadian youth incarceration rate was 20.6 per 10,000 youth aged 12 to 17 (excluding Quebec and Ontario 12 to 15 year olds). (*Juristat*, Vol 24, Number 3)

If the system continues like this and if police and prosecutors continue to use courts and jails in response to youth crime, the rate will remain high. If the differences among provinces are the result of the decisions of those running the youth justice system, these decisions must be looked at. Police and prosecutors are gatekeepers. An independent review appears necessary.

This Commission's second interim report recommended guidelines for using discretion. Recommendation 1 states:

> *That Saskatchewan government, First Nations, the Metis Nation and the police work together to create a set of guidelines for the use of police and Crown discretion that ensures that First Nations and Metis youth will be diverted into culturally appropriate programs or services.*

Clearly, Saskatchewan's response to youth offences and victimization relies heavily on imprisonment, due in part to public pressure to get tough on crime. The public believes that imprisonment reduces crime. However, it does not.

PREVENTION STRATEGIES

Bad Kids?

"If you were interested in creating a criminal, you'd have a pretty good chance
If you took someone from a seriously troubled home
Put them into a string of foster homes,
Or group homes…
Changed their social worker on a regular basis
Change everything
Keep changing
Change everything.

If you really wanted to create a criminal
You'd let a young person drop out of school,
Let them run away from home at an early age,
And let them look for comfort in alcohol or drugs.

And somewhere …
… somewhere …
In their lonely and painful existence
You'd let them be abused.
Physically, sexually or emotionally abused.

And when they looked for help

…Because sometimes we do look for help …
If we know where to look…

If you wanted a kid to become a criminal,
You'd see to it that there wasn't any help available.

When the people who could help them,
Who want to help them,
Just don't have enough time …

That's when we fall through the cracks.

You see kids as "trouble,"
Instead of "troubled."

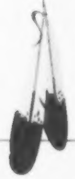
"Most of all,
If you want a kid to become a criminal,
You treat him like a criminal."

(transcript from *Bad Kids? How to Create a Criminal*, an award-winning video, inspired by a quotation in the National Strategy on Community Safety and Crime Prevention 1997 publication, *Young People Say*)

Prevent Children From Entering the System

Many people throughout the dialogues told the Commission of the strong link between children who have been in the child welfare system and becoming involved in the criminal justice system. This link, noted in the Manitoba Justice Inquiry in 1999, has been verified in recent research.

It is estimated that over 25,000 First Nations and Metis children are in the care of Canadian child welfare systems. There has been a 71.5 per cent increase nationally in the number of First Nations children entering care since 1995 and



numbers are not decreasing. This suggests little has been learned from the devastating effects of residential schools. There are currently three times as many children in care than attended residential schools at their height in the 1940s. (Blackstock & Bennett, n.d.). Residential school victims and children raised in the child welfare system share several features. Both are children taken from their homes who no longer belong to a family or community. These children lose their language, their culture and their identity. This is not only damaging, it is contrary to the *Convention on the Rights of the Child* (CRC).

Across Canada, more than 120 agencies deliver child welfare programs under provincial laws. In Saskatchewan in 1995 there were only six agencies. By 2003 there were 17. The recent increase in the number of children coming into care is in part due to the increase in services provided on reserves. Before the creation of these agencies, provincial welfare services were not readily available to on-reserve families.

These agencies provide services on reserves under *The Child and Family Services Act*. They try to balance the culture of the communities they serve with a child welfare law that is based on the child's individual rights. The concept of child removal or apprehension is a foreign concept to the traditions of First Nations communities of a communal parenting system that allows for the transfer of parental authority from one community member to another in times of stress. (Blackstock, Trocme & Bennett, 2003). The Government of Saskatchewan's recent legislative changes recognize the value and importance of kinship care.

In urban areas, about half of First Nations children and 42 per cent of Metis children are being raised in one-parent families (Statistics Canada, 2003a). There is a greater share of First Nations children, youth and families living in poverty than among all Canadians. A number of these children and their families move frequently both within urban areas and between reserves and the inner city, increasing their instability. It is estimated that a First Nations or Metis child living in a city may live in five different places in a year. (Speaker at EGADZ, Saskatoon) The effect of moving on education is devastating.

> **Research has shown that when a child moves from one school to another it takes them about two months to adjust, and if you move a child more than twice a year, depending on the individual child, or more than once it puts their whole year at risk. And if a child is more than a year behind his peers then the chances that that child is going to drop out of school are greatly, greatly increased.** (Speaker, Regina Friendship Centre Community Dialogue)

All governments must take immediate action to strengthen First Nations and Metis communities and families so they can better care for their children. Many of the youth involved in the justice system are products of the failed child welfare system.

In November, 1989 the United Nations adopted the United Nations Convention on the Rights of the Child (CRC) outlining the rights children have as members of the human race.

Justice officials told the Commission youth in conflict with the law often are in need of other social services. Some suggest children and their families are denied social services because of policy changes. These changes limit services to only those children and youth who are in need of protection. A northern court judge told the Commission that child welfare services must be expanded to include prevention. Youth at risk need these services before they come before the courts. These concerns point to the need for an approach that meets all of the needs of young people.

The child welfare system, even though it was designed to provide a safe and healthy environment for young people, has in some cases proven to be a direct cause of youth ending up in the youth justice system. (Speaker, Saskatchewan Youth in Care and Custody Network presentation)

The link between the child welfare system and offences by youth must be addressed. First Nations Child and Family Service Agencies should consider taking on responsibility for youth probation and other community based justice programs. This extra responsibility would result in root causes of offending behaviour being dealt with by those who understand family circumstances. To change the role of the community and the government in children's lives there needs to be a transfer of resources and responsibility. Government must stop being a provider of services to children and their families and become the facilitator of the services needed by the community.

> **Establishing, listening, accepting and supporting as chief governmental actions will not be easy. Playing a subordinate role in determining need and playing only a supportive role in meeting need are threatening to public officials and to the public sector unions.** (Whyte, 2002)

To provide preventive services that meet the needs of the First Nations and Metis families in cities, the Commission asks all governments to find ways to jointly fund services to children, youth and their families. These jointly funded services will make sure that children and youth are not denied services as a result of disputes between different governments or between governments and First Nations and Metis communities. The Northern Health Strategy, according to Duncan Fisher, Assistant Deputy Minister, Saskatchewan Health, is an example that places the needs of people first. This strategy is built on principles developed by and for northern residents. It is based on the concept of holistic primary health care that considers the physical, mental, emotional and spiritual health of individuals, families and communities. It identifies health promotion and illness prevention as cornerstones. It considers the North's unique language and the cultural and social economic situation. The partners are the residents, Saskatchewan Health, Northern Inter-Tribal Health Authority, Northern Regional Health Authorities and the Government of Canada.

The *First Nations Child and Family Services Joint National Policy Review* looked at current national policy and reached agreement on several recommendations. It was overseen by a joint steering committee co-chaired by the Assembly of First Nations and the Department of Indian Affairs and Northern Development (Saskatchewan region). This committee was composed of an equal number of First Nations and Indian Affairs representatives and a representative from Health Canada. The committee wrote 17 recommendations. These recommendations ranged from supporting First Nations self-government in child welfare to increases in levels and flexibility of funding to increase community ability to care for children. (McDonald & Ladd, 2000). These recommendations have not been acted upon. All parties must resume discussions and implement recommendations.

The Commission was advised that the increase in the number of First Nations children in care can be partly blamed on federal policy that provides funds after children are removed from the parental home under Directive 20-1. This policy does not support preventive or family support services. Therefore, for Child and Family Services Agencies to provide help they must remove children even if a preventive service might better serve their needs. Off-reserve, children under provincial child welfare authority receive a number of services that children and families on reserves do not.

Recommendation 2.6

This Commission recommends that the Department of Indian and Northern Affairs Canada review the funding arrangement with First Nations Child and Family Services agencies to ensure that services to prevent children from coming into care are funded.

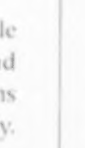
Research by Samuelson and Robertson (2000) has found that the influence of role models in the home and in the community, and identifying with one's gender and culture are important in determining behaviour. They found that any problems in these areas could be overcome by the positive influence of a strong family. Therefore, strengthening family can reduce the number of children coming into care.

Resources within our youth were brought to our attention. Peer mentoring was suggested as a model. An example is the Caring, Helping, You and Me Sharing (CHUMS) program in Tisdale. This volunteer mentoring program matches high school with elementary students to promote healthy lifestyles and increase awareness of support agencies in the community. While not created with gangs in mind, this program does include elements of early intervention and social development. This Commission supports the development of peer-mentoring programs in schools.

For more information contact the CHUMS Program Coordinator at Box 2864, Tisdale, SK S0E 1T0

Strengthening Family

People taking part in the dialogues with the Commission said that a child needs a setting to receive values and knowledge if culture is to be shared. The family forms that setting. Every child needs parents, grandparents and caregivers to



teach rights and obligations. First Nations and Metis people believe that their own traditions will triumph. The youth participants saw a need for family, support, education and caring mentors.

> **Many of today's youth have parents who are unable to provide what they require so the Young Offender system ends up adopting kids.** (Green & Healy, 2003)

The need to restore culturally based parenting practices is recognized so that First Nations and Metis peoples are able to sustain and pass on cultural values from generation to generation. There is a role in all systems to pay attention to cultural teachings and traditions. (Halverson et al, 2002).

> **... one of the first steps should be to provide the tools, programs, and financing to the First Nations to help re-introduce traditional parenting skills back to the culture. People have also suggested a number of ways of improving parenting. For example, parenting courses should be compulsory in high school, proactive support should be available for parents who are having difficulty raising their children or adapting to their parenting role, and that early intervention should be taken with parents who are having difficulties controlling or dealing with their children.** (Linden, 2001)

Many parents say they are overwhelmed. They need to take a break but have no one to turn to for childcare. Lack of family or a network to provide help is a concern, as children are at risk when parents cannot cope.

Children are taken into the child welfare system when they need protection or where no adult is willing or able to care for them. When families are in crisis, and lack skills to properly parent, children are at risk. There are more single parent families. They suffer a higher degree of stress. A lack of parental supervision is noted, which is blamed on stress, unemployment, disabilities and poverty.

To prevent children from entering the child welfare system, to reduce youth crime and ultimately make our communities safer, single parents require help.

Recommendation 2.7
This Commission recommends that all governments increase supports to single parents, including providing adequate social assistance, respite, parenting knowledge and skill development.

Parenting centres or co-operatives for young parents were proposed. These centres would operate on a 24-hour, seven-day basis and provide young parents with a safe place to get help. Parenting centres would provide relief and a chance to learn cultural values and the skills of parenting. They could provide those with skills a chance to further the health and safety of others. Young parents who benefited could in turn contribute their time and skills to young parents. Such a centre could be established in any community and need not be expensive.

The goals of a parenting program are to enable parents to learn to understand the needs of their children, provide guidance to children and to learn the parenting values of their culture.

A number of "young parent" programs are currently in existence in various communities throughout Saskatchewan:

- KidsFirst (8 communities and the North).
- Teen and Youth Parent Program (13 services delivered by community based organizations.
- Staff in five Community Resources and Employment regions.
- Early Childhood Intervention Program (ECIP) (16 programs provincially).
- Community Action Program for Children (CAPC) (31 of the 35 off-reserve programs provide family support and parenting components).
- Canada Prenatal Nutrition Program (CPNP) (11 of the 12 off-reserve programs provide direct support).
- Aboriginal Head Start (AHS) Program (16 off-reserve programs).
- Nobody's Perfect Parenting Program (in 2002-2003 a total of 45 Nobody's Perfect Parenting sessions were held).

Recommendation 2.8
This Commission recommends that the Government of Saskatchewan facilitate a discussion with youthful parents regarding the concept of parenting centres/co-operatives to provide youthful parents respite, parenting knowledge and skill development.

Recommendation 2.9
This Commission recommends that the Department of Community Resources and Employment engage community and the various government departments and agencies providing services to children and their families, and together develop local community plans to strengthen family through provision of culturally relevant, parenting skill training.

Samson First Nation
Box 159
Hobbema, AB
T0C 1N0
Phone (780) 421-4926
Fax (780) 585-2700

Community Conversations

The Commission learned about an activity directed at the roles and responsibilities of families. In this activity, a community is invited to discuss these roles and responsibilities with the goal of developing a community code. The community would discuss how parents are expected to behave towards children, how children are expected to behave towards adults and how children are expected to behave towards each other. The discussion would look at the strengths of the community and point out areas needing improvement. This social survey would provide the foundation for a stronger community and one that is more responsive to its children and families. The goal would be to affirm that system of family, community and caring where every individual is nurtured through childhood into adulthood. Examples of such codes exist in First Nations communities in Canada and in other countries. Samson First Nation in Alberta has a Code of Responsibility that addresses community relationships.

> **My community of Ochapowace has a community vision and it is to be an independent, proud, prosperous, unified First Nation with our own values, culture, language and land. We established that in 1992 as a community and we have been working towards that vision for over 10 years now. And the Commission on First Nations Justice Reform, I am hoping through implementation, that this will be able to assist our community in moving towards our community vision, and especially in the area of justice. For us, we look at what we call restorative justice. And what does that mean to us, for us, as First Nations people? For Ochapowace that means ownership, first of all. We want to take ownership; we want to take responsibility for our own issues, our own problems, and our own challenges.** (Speaker, White Bear First Nation Community Dialogue)

The Issue of Gangs

The issue of gangs was addressed in the Commission's second interim report. The commission served notice that *"long term steps must be taken to foster healthy families and positive role models for youth"* and that *"all levels of government must make the consequences of criminal gangs a priority for youth education."*

As communities separate along ethnic, language, cultural and economic lines, there is risk of further marginalization for First Nations and Metis people. Gangs made up mostly of young adult men have been a result. These young men want to belong, to have a family-like unit. They want greater self-esteem and more practical things like money, security and excitement. First Nations and Metis gangs have become widespread in Western Canada.

The Commission has learned about the influence of gangs through talks with adult gang members in prison, youth gang members confined as young offenders, Elders and prison staff. Gang members feel trapped and unable to quit, especially while serving their sentences. Elders spoke of their frustration in trying to work with gang members who want to break away, but whom gang leaders intimidate.

Our dialogues confirmed facts that are well known:

- Gangs have a powerful hold on their members.
- Leaving a gang is often impossible.
- Recruitment is aimed at an increasingly younger age group.
- The problem has spread from cities to rural and First Nations and Metis communities.

The Federation of Saskatchewan Indian Nations in *Alter-Natives to Non Violence* reports that gangs, like families, provide youth with a sense of belonging. Many First Nations and Metis youth feel disconnected from community and family when they arrive in a city.

Copies of *Alter-Natives to Non Violence* can be purchased at local bookstores.

> **Gangs are good for people who have nobody to run to, like if they have no family, no support. They're good for people who want to live on the streets, want something that's not there**. (Youth, Kilburn Hall Youth Centre Dialogue)

Preventing gangs needs an approach that begins at home, continues in elementary school and lasts for a long time. A successful program is built on education, prevention and intervention. American gang researchers Goldstein and Kodluboy recommend a comprehensive intervention plan. They suggest discipline by itself fails to "recognize the unique nature of gang related problems ... and does little to support families and communities in responding to gang activity. A discipline policy alone is no more effective in addressing the gang problem than is police suppression alone. What is needed is a comprehensive strategy involving all the stakeholders." A comprehensive intervention plan involves public education, gang resistance training, family intervention, school programs, social skills training, job counselling, community development, community policing, information on gang members' needs and participation of community leaders.

A submission by the Qu'Appelle Valley Friendship Centre raised youth involvement in gangs as an area of concern:

> **Our Spirit Eagle Youth Group program, which operates with federal funding from Heritage Canada's Urban Multi-Purpose Aboriginal Youth Council, functions as a key anti-gang program in our community, providing a range of recreational, personal development and cultural-based activities to predominantly high-risk Aboriginal youths. This program is designed to meet the needs of youth that might otherwise be drawn to gang-related activity.**

An example of success is the Montreal Preventive Treatment Program. It shows how an elaborate crime prevention approach can deal with early childhood risks including gang involvement. This program was designed to prevent antisocial behaviour among disadvantaged boys who revealed disruptive behaviour in kindergarten. It demonstrated that parent training and child skills development could steer antisocial children away from crime and gangs. Parent training was combined with social skills training for boys 7 to 9. Parents received 17 training sessions on monitoring children's behaviour, positive reinforcement, effective punishment and managing family crises. The boys received 19 sessions on social skills and self-control. Small groups containing both disruptive and non-disruptive boys were trained by coaching, peer modelling and role-playing. An assessment showed short-term and long-term gains with less delinquency, substance use and gang involvement at age 15.
(Centre for the Study and Prevention of Violence, 1996)

Inner city youth complained to the Commission about the presence of gangs and the pressure they face to join one. They suggested ways should be found to inform youth of the dangers of gang membership and to help youth wishing to leave gangs.

> **There's a lot of gangs out there. Some of them are out there recruiting, they're looking for those young girls, you know, they could have in their corner. They're also looking for those guys that think – you know, get them involved in drugs, you know and they give them those drugs and from there, they get them to do a little bit more. There needs to be orientation, like the services are there to help you find a place and all that.** (Elder, Kilburn Hall Youth Centre Dialogue)

Alter-Natives to Non Violence supported the main suggestions of *The Edmonton Aboriginal Youth Gang Task Force Final Report* (2003). These were safe houses, anonymous health services, strong youth support networks, youth involvement in program development, peer support, self esteem, inclusive community, focus on whole family needs, targeted services and more Aboriginal culture.

> **The whole gang experience is one that begins at a very young age. I think there is a real need for us to begin asking for education to begin at a very early age.** (Speaker, Saskatchewan Native Theatre Community Dialogue)

The *Alter-Natives to Non Violence* report recommended a plan of three to five years to prevent and reverse the rise in youth gang membership. Metis Family & Community Justice Services (MFCJS) supported this. In their submission, MFCJS recommended:

> **A youth strategy be developed...a long-term strategic plan that is comprehensive to address and reverse the rise in youth gang membership in Saskatchewan.**
>
> **It is common knowledge that much of the gang recruitment occurs in youth correctional facilities. In order to stay alive and be part of the crowd, youth will willingly choose or get recruited into a gang. Due to distorted media coverage of gangs, youth carry a positive image of being a part of a gang life and seldom receive the news about the reality of gang life. This information is found later when it becomes too late to make a choice whether to stay or to leave a gang.**

The Canadian Training Institute's *Literature Review on Youth Violence* was written to develop ways to deal with youth involved in gangs. The report says that gang members are a small proportion of the adolescent population. But they commit the majority of serious youth violence. Rates of violence are higher in schools with gangs. Gangs are present in large cities, but also in suburban and rural schools. Youth violence is more vicious today than in the past and is more likely to cause serious harm. More young people, both male and female, are carrying weapons. There is an increase in hate-based or racist crime. School violence is of concern because younger children are getting involved and include more acts of random violence.

The Canadian Training Institute has also produced a gang exit and intervention plan, *Breaking the Cycle*. It is designed to increase skills and leadership and help youth involved in gangs to return to school or find jobs.

Recommendation 2.10

This Commission recommends that the governments of Canada and Saskatchewan, Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan build strategies to respond to gangs that includes: education, prevention and intervention, and that information about gangs be provided to parents, schools and communities.

CONCLUSION

Two important things must change to return justice to the community. First, the role of government in the design and delivery of services must change. Second, how services are delivered must change. These two elements will shift the response of criminal behaviour from the criminal justice system to the community.

To return justice to the community, governments must be leaders and helpers, not providers of services. Communities must be involved in promoting themselves by discovering their needs, identifying their strengths and providing services to improve social and economic well-being.

> **And then some of the suggestions that I would give on how I think the justice system can be improved would be the community input to make the rules, instead of the rules coming from Ottawa to us for us to follow their rules. Because that's what it is, it's mostly bureaucrats making rules for us to follow. Because we know what our community is about as community people.** (Speaker, La Ronge Community Dialogue)

The success of community development and crime prevention depends on collaboration among governments, non-profit organizations, business and communities. Their goal must be to strengthen children, families and communities.

A holistic approach that brings together services from several departments and agencies in different levels of government is essential if justice is to be returned to the community. The Government of Saskatchewan has begun this approach

The Manitoba Project
Gang-proof
Website is
http://www.gov.mb.ca/justice/gangproof/index.html

through a number of initiatives, the Human Services Integration Forum, the Regional Intersectoral Committees and Complex Needs Case Protocol (as referenced on page 48 of this Commission's third interim report and in Chapter 8).

This Commission recognizes that recent legislation respecting privacy and access to information may restrict sharing of information key to integrated service delivery and encourages governments to review such legislation to remove existing barriers. Some suggest that integration of services must be legislated to ensure integration occurs.

3

VIOLENCE & VICTIMIZATION

VIOLENCE & VICTIMIZATION

INTRODUCTION

> **Any attempt to impose your will on another is an act of violence.**
> (Mahatma Gandhi)

According to the broad definition of Mahatma Gandhi, the potential for violence and victimization exists everywhere. Violence and victimization can happen within families, communities, offices, schools, playing fields and playgrounds, in movies and on television. No person, regardless of sex or age, is immune.

When people think about violence, they often think about its most obvious form - physical violence upon a person resulting in pain or injury. It can range from a little push to a serious attack causing injury or death. Sexual assaults are also a form of physical violence.

Less evident forms of violence are psychological, emotional, spiritual or cultural. There are also threats, economic abuse and elder abuse. Since these acts are not as obvious as physical violence, they often are not recognized. However, the effect of these forms of violence cannot be underestimated. They can play an important role in the continuation of violence. To make them acceptable is to make the obvious violence less acceptable.

Violence and victimization affect both sexes and all ages, races, cultures and income levels. There can be multiple parties to violence. No particular part of society owns the issue of violence. Everyone is vulnerable to violence or its consequences. An understanding of it is key to making a positive difference.

> **At some point we have to change what's going on because violence begets violence, and the cycle just keeps continuing**. (Speaker, Provincial Association of Transition Houses presentation)

The Commission's vision regarding violence is one where communities are as free as possible from the consequences of violence. In this vision children are safe, families live together peacefully and communities work to support themselves and others through many cultural, social, recreational, political and economic activities.

In such communities, prevention is generated by community activities. For example, artistic, cultural and recreational activities encourage youth to stand out and make a community proud. This gives the community a reason to celebrate youth, culture and accomplishments to strengthen community values and beliefs and provide a strong foundation for youth and their families.

When violence does occur, a response will come from community members familiar with individuals, families and issues. People will talk with one another with the intent to restore harmony in the community. An appropriate response will go further than a criminal justice response. It will involve all parties affected by the incident as well as others such as victim services workers, school professionals, if students are involved, Elders, people trained to deal with violence and mental health workers, if needed. A response may include police to intervene sensitively in crises, but it will be a later option rather than an earlier one. Police and the courts will have the support of the community if a criminal justice response is still necessary.

In other words, the Commission envisions a comprehensive, coordinated, community-based response. It would take into account all factors. Abuse has to be seen as a violation of people and relationships, rather than simply a violation of law. There must be some way to create harmony for individuals, families and communities that have experienced violence.

BACKGROUND

Violent behaviour is rooted in people's life experience and situations. Many First Nations and Metis people live in poverty. This results in lower standards of living, increased family and social problems and increased risk of homelessness. Ghettos are being created. These ghettos are linked to social housing, lack of jobs and a large number of single parent households headed by women. Living in this environment makes it difficult to lead a life free from violence. (Hanselman, 2001)

> **When some parents feel their lives are spiraling out of control, that parent is more likely to direct a form of violence, verbal, emotional, physical, sexual, neglect or abandonment towards their child or children. This form of adult bullying can transfer down to sibling abuse and parental attacks.** (Speaker, Saskatchewan First Nations Women's Council presentation)

Community members told the Commission of other contributing factors to violence. An important one was lack of housing, particularly in the North. Family members living together in crowded conditions, results in household stress. Combined with poverty and unemployment and drug and alcohol abuse, congested housing can lead to violence among family members.

Situations that bring about violence are not limited to living conditions or habits, such as alcohol use. These situations can exist in the general community as well. Contributing to violence in First Nations and Metis communities are racism and discrimination. Racism and discrimination have created economic, social and political barriers to First Nations and Metis people. These barriers can create the pressures that lead to violence within families and communities. Lateral violence affects whole communities.

> **I will tell you a bit about lateral violence for those of you that don't know what it is. It's an internalized feeling of anger and rage that develops in a person as a result of being constantly put down. It also manifests itself in our**

> **community through family feuds, gossip and organizational infighting. It is responsible for dividing our communities into factions, thereby preventing us from becoming a more strong and unified people**. (Speaker, Central Urban Metis Federation Inc. presentation)

Understanding contributing factors in what causes violent behaviour or victimization is necessary if they are to be dealt with successfully.

> **In First Nations and Metis communities the childhood trauma that continues to impact generation after generation to today is the atrocities that happened in residential schools, day schools, boarding schools, foster/adoptive homes. The oppressive violence of these children who are now our great-grandparents, grandparents, and parents is still unresolved**. (Manual, 2002)

In Saskatchewan, fifteen residential schools were operated by the Government of Canada, and the Roman Catholic Churches, the United Church and the Anglican Church. Despite involving forced and sometimes forceful separation of children, the residential school experience was not recognized until recently as being related to violence and victimization. While some former students speak about it being a positive experience it is far overshadowed by the stories of violence. Indian Residential School Resolution Canada reports that "in addition to allegations of physical and sexual abuse, which are found in 90 per cent of the legal claims, allegations relating to such things as cultural loss, breach of Treaty, loss of education opportunity, forcible confinement and poor conditions are also alleged."

More information about Indian Residential School Resolution Canada can be found at www.insr-rqpa.gc.ca

The last federally-run residential school closed in 1996 although most ceased to operate in the mid-'70s. The impact of the abuse is not limited to the persons who suffered the abuse; the anger, lack of parenting skills, efforts to erase the abuse through alcohol and drugs, but have also affected subsequent generations. Many of these communities had to deal with other problems at the same time, such as racist legislation and policy (*The Indian Act*), racist behaviour, high unemployment, poverty and neglect.

In its publication *Aboriginal Domestic Violence in Canada*, the Aboriginal Healing Foundation (AHF) writes about the community factor as it relates to family violence:

> **Family violence and abuse in Aboriginal communities is also a sociological characteristic of whole communities and not just of certain individuals and families. It is rooted in the complex web of Aboriginal community history and current dynamics. This is a very important distinction because it implies that the problem of domestic violence and abuse in Aboriginal communities cannot be understood**

> **and successfully approached based on the models and assumptions of most research and intervention programs in mainstream society that do not consider the community dimension.** (Bopp, Bopp & Lane, 2003)

The AHF refers to this as the "culture of violence." Violence, abuse and victimization have become normal in some First Nations and Metis communities because they are so widespread. Therefore, it is not sufficient or appropriate to deal with violence as individual cases. Rather, violence and victimization must be approached with a community view in mind.

The AHF was formed in 1998 with a ten-year mandate. It received $350 million to fund healing projects related to the recovery and healing of communities affected by the legacy of residential schools. It is no longer giving out funds but, rather, slowly winding down. The last deadline for submission of projects was February 2003. The AHF's annual report for 2003 indicated that the demands for funds outweighed the funding resources by a ratio of 4 to 1. The Commission heard concerns about this loss and is supportive of the requests that its mandate be extended.

> **I have a residential school claim in now for going on six years, and they take their time. They will do anything to avoid reality of what happened in the residential schools and the reality that they're taking our land, our forest, by gunpoint.** (Speaker, Beauval Community Dialogue)

IRSRC ADR Help Line
1-800-816-7293

In November 2003, the Government of Canada, through its Department of Indian Residential Schools Resolution Canada (IRSRC), offered former residential school students an option, the ADR (Alternative Dispute Resolution) process, as well as litigation, for those who have a claim of sexual or physical abuse. Indian Residential School Resolution Canada is to be in place for seven years. The intent is to solve claims for those who choose the ADR option within a year of the time of establishing eligibility of the claim. The hearing is to be closely aligned with a restorative justice process. One of the criticisms of the new process is that the compensation claims, which are based on previous settlements (i.e. case law), are not uniform across the country. People who settle their claims through the ADR can choose litigation for loss of language and culture. On the other hand, the Government of Canada has set $172.5 million aside for language and cultural loss. Consultation with former students on how to best use the fund is now in progress.

This Commission spoke with a representative from Indian and Northern Affairs, Social Services branch, regarding the exemption for individuals who settle a claim through IRSRC. The INAC regional office follows the regulations of the province. For Saskatchewan, the Minister of Social Services of the Province sets these regulations. That ministry has been renamed the Department of Community Resources and Employment.

If a person is on social assistance and receives any substantial amount of money, whether from a lottery or a settlement such as that from the residential schools, $10,000 of that money will be considered exempt for "pain and suffering." Any amount above that will be divided by the amount the person would normally need per month and then he or she will be expected to be off social assistance for that length of time.

If the person who receives the settlement is on social assistance and decides to give the money to grandchildren the department considers the settlement money to be given "for future needs of the claimant" and therefore, Social Services can ask that the money be recaptured, including liquidating any purchases that might have been made with the money. Some of the claim above the $10,000 can be used for counseling services. Each case is to be looked at on an individual basis.

Each time the government is in the position of giving compensation for past wrongs, a new decree must be made. In the case of the compensation to the Japanese, the amounts given out were smaller and the Japanese were allowed to keep all of their settlements.

Recommendation 3.1

This Commission recommends that the Government of Saskatchewan, specifically the Minister of Community Resources and Employment, review this regulation with a view to increasing the amount of exemption for those on social assistance who receive a settlement from the Government of Canada for abuse suffered during their residential school experience and that the Government of Canada also reconsiders their position to a cap on their settlement.

It is important to point out that the causes of violent behaviour are not excuses. To find those responsible and need treatment is not to forgive or excuse their behaviour. Instead it shows a need for them to face their own behaviour. This behaviour must be understood in relation to the community. For example, Dr. Eric Young, deputy chief medical health officer and director of communicable disease for Saskatchewan Health, wrote this about studies in Prince Albert and Regina:

> I understand that an increasing number of individuals such as social workers, police officers, judges, public health and addiction workers, etc. are becoming aware that an individual and his or her crime related to a personal addiction needs to be understood in this broader context. If society's goal is to help persons, who have suffered severely in childhood and who now have an addiction, to become emotionally, psychologically and physically healthy and productive members of that same society, then one could question whether their criminalization for "possession for

> **personal use" of currently illicit drugs (or for non-violent crimes done as a consequence of their addiction) and consequent enforced suffering and degradation will accomplish this.**

Canadian Centre for Justice Statistics, (2001c) reports:

- Rates of spousal homicide among Aboriginal women were more than eight times higher than for non-Aboriginal women. Aboriginal men had rates of spousal homicide 18 times higher than non-Aboriginal men.
- Experiencing severe, potentially life-threatening violence (beaten, choked, threatened with a gun or knife, or sexually assaulted) was more common among Aboriginal victims. Almost one half of Aboriginal victims of spousal violence (48 per cent) experienced potential life-threatening violence at the hands of a current or ex-partner compared with 31 per cent of non-Aboriginal victims.
- According to the 1999 General Social Survey, Aboriginal peoples were more likely than other Canadians to report being assaulted by a spouse in a five-year period.

A presentation by Karen Hay-Draude, a graduate student working on a study with Saskatchewan Health, gave startling results from Prince Albert. On the issue of family violence witnessed by injection drug users, 79.4 per cent of the participants reported witnessing violence at home while growing up. "Of the participants who witnessed violence in the home, 88.6 per cent witnessed violence between their parents or the adults who raised them, 67.7 per cent witnessed violence between their parents and their siblings, and 55.7 per cent witnessed violence between their parents and their parents' friends."

The problem of violence in a First Nations or Metis community, or any other community, must not be ignored. The consequences of violence are devastating.

> **Sometimes the victims of crime, if they do not receive the adequate help they need at the time, they can become tomorrow's offenders.** (Speaker, La Ronge Community Dialogue)

Domestic Violence

The Commission heard many stories about the consequences of violence and abuse in First Nations and Metis communities. Many communities saw violence, domestic violence in particular, as one of the most serious problems in their communities. It is more often men who perpetrate violence against women and children.

The extent of domestic violence among First Nations and Metis families is widely known. The Departments of Justice and Corrections and Public Safety stated:

> **Some commentators have suggested that levels of family violence in Canadian Aboriginal communities have reached epidemic proportions. Aboriginal peoples are more likely than other Canadians to report violence by a spouse (20 per cent compared to 7 per cent). Moreover, Aboriginal women are victimized to a greater degree than all other populations – 25 per cent of Aboriginal women report being victimized, which is twice the rate of Aboriginal men and three times the rate of non-Aboriginal women and men.**

Further, the Canada West Foundation (Hanselman, 2001) found that Aboriginal families are more likely to experience domestic violence than are non-Aboriginal families. In a general social survey in Saskatoon and Regina, 70 per cent of the single parents reported violence in a previous relationship.

RCMP statistics given to the Commission for 2002-2003 in Saskatchewan show the following:

- Reported spousal assault cases for 2002
  Male offender – 1,111 reported
  Female offender – 139 reported

- Reported Spousal Assault cases for 2003
  Male offender – 940 reported
  Female offender – 145 reported

It should be noted that these are estimates and do not include city or municipal police numbers.

People often remain in an abusive relationship or return to such a relationship in which there is violence out of love and in the hope that the abuser will change. Some return out of fear for themselves, fear for their children or fear of poverty. Some come back because they have no support from family or community to live elsewhere.

Bruce Wood, trainer and co-author of *Moving Towards the Light (2002)*, delivers family violence guidance for First Nations and Metis people in Saskatoon. He feels that training and treatment for women, as well as for men, on family violence is lacking. He also feels that women are not being listened to when requesting help. For example, when women say they love their partners and want to stay in the relationship, or when women claim to be violent themselves, they can be revictimized if they are made to feel stupid for wanting to remain with their partner or if they want to address their violent behaviour and no programming is available to address it. A change in attitude is needed in society to assist with changing the abusive behaviour of both men and women.

Contact Public Legal Education Association of Saskatchewan for its new free publication *A Guide to the Law for Saskatchewan Women*.
Tel: 306/653-1868
www.plea.org

A problem raised at the dialogues was delays in police responses to violence. In one northern community a woman said that if her husband, a non-Aboriginal, calls the police, the response is much quicker than when she, a Metis woman, calls. She saw this as discrimination. A woman in a rural area told about calling the police for help, being routed to the Regina call centre and waiting hours for police to arrive. Ongoing training in the seriousness of domestic violence needs to be delivered to all police. The high cause of death of police due to responding to domestic violence situations supports the need for more effort in this area.

Women and Violence

> **The violence against women and children continues to be at unacceptably high levels in some of our communities, and attitudes towards victims and offenders have been slow to change. The community and family members often blame the victim for the violent behaviour that is excused, and continued efforts to change attitudes and prevent violence, and ensure women's and children's safety, and to hold the offenders accountable while providing treatment to stop the cycle of violence is needed.** (Speaker, Metis Women's Council Inc. presentation)

> **The systemic discrimination and prejudice that has existed, has existed against First Nations and Metis women since the first colonist landed. This is most aptly illustrated by the document where the Hudson Bay Company recorded the name of my great-great-aunt with a capital E for "squaw."[Squaw is the English mispronunciation of the Cree term for woman, Esqwew.] It doesn't seem to matter whether you are Cree or Blackfoot or Mi'kmaq, or whatever, you are still called a "squaw" or "a dirty Squaw" or "a lazy Squaw."** (Speaker, Institute for the Advancement of Aboriginal Women presentation)

From the teachings of oral tradition, it is known that First Nations women were the equals of men. They were respected for their wisdom and their role as mothers. With the destruction of language and spiritual and family practices through colonialization, legislation and racism, the respected role of women has declined. This has placed First Nations and Metis women in a vulnerable position.

Erica Beaudin of the First Nations Women's Council told the history of the First Nations woman to the Commission at the presentation from the Saskatchewan First Nations Women's Council:

> **There is a history when we talk about where family violence comes from and where the dysfunction in some of our families comes from, because precontact in society was deeply rooted in the structures.**

> **First Nations people's ideas of family is different from the common nuclear family found in the mainstream European world. Indian families are made up of extended relatives, creating a base of knowledge and strength. They lived in hunting and gathering societies, structured on communalism.**
>
> **The division of labour was based on gender. There was men's work and women's work. Both gender roles were equally important to the survival of the people, therefore there was no male domination.**
>
> **Traditional Indian society began to fall apart with the arrival of the Europeans and their economic system of capitalism. This was characterized by inequality, especially male domination. The new family structure was the nuclear family, and society was based on individualism, which goes against our Treaty rights, which are always based on the collective.**
>
> **The process of colonialism has far-reaching negative effects on all indigenous people, but it had a particularly negative effect on indigenous women. They were exploited because of their race and their gender. Women were exploited for their labour during the fur trade, as well as abused sexually, and oftentimes left to fend for themselves and their children.**
>
> **When people are colonized, they often internalize the violence that is extended toward them. Self-hatred is just one expression of this violence. This self-hatred was systemically and consistently taught in residential schools to several generations of First Nations people.**
>
> **Now Aboriginal women make up one of the lowest social and economic groups in Canada. This translates into a position of powerlessness.**

A submission to the Commission by the Federation of Saskatchewan Indian Nations said although there is more information being circulated about the traditional position, First Nations women are still ignored by many who hold the power. The Federation recommended the following:

> **The way in which society views and treats women, and its perceptions of First Nations' worth and value need to be addressed. This change can be accomplished by raising awareness within mainstream society. Further, the First Nations community needs to place a higher value on women (no matter what lifestyle) and children. The awareness can occur in every level of mainstream society, including courts, media, in schools and homes.**

When you deal with justice there are no doors to go to. You're all alone. You have to find the door yourself, you have to open the door yourself, you have to hold the door open for somebody else. It is too much to expect the people with the least resources, the least amount of self-confidence, the least amount of everything to have to go and do all of those things. (Speaker, Victims and Violence Roundtable)

Lack of respect for women erodes self-worth and power.

> **I was taught not to value myself as an Aboriginal woman, and that I was a second-class citizen. So how, without the self-esteem or the confidence, how do you stand up for your rights? Where do you get the courage from? Because you'll be knocked down again. Or maybe there is something in your past that you're ashamed of, and so you allow that to eat at you, you know, and you don't stand - chances are we don't stand up for our rights, right? We have to change the attitude towards ourselves and how we treat ourselves has to change.** (Speaker, Institute for the Advancement of Aboriginal Women presentation)

The Institute for the Advancement of Aboriginal Women in its presentation recommended that Aboriginal women be appointed to positions of power. This was also the message of Chief Connie Big Eagle of Ocean Man First Nation:

> **I think in order to move forward you need to involve the women, the First Nations women, in development of some of these programs. You can't allow us to sit as advisory any more. We have to be part of that planning, part of that designing, and part of that implementation. So that's where the true success I think will come, is when you include us in all of those developments.** (Spoken during presentation by Saskatchewan First Nations Women's Council)

The Metis community agreed with the idea of fully including women:

> **Women's experience is needed ... and needs must be included in designing new programs, and they must be supported in full, and have active participation in each stage of development and operation.** (Speaker, Metis Women's Council Inc. presentation)

The obvious must not be ignored – the voice of women must be included and given weight in decisions that affect them. And most decisions do affect them!

Children and Violence

Children suffer from violence in two ways – either by witnessing it or by being direct victims of it in their homes, a place where they should be the safest. The Departments of Justice and Corrections and Public Safety reported that in households at the national level where domestic violence occurred, children witnessed violence in 47 per cent of First Nations, Metis and Inuit households compared to 37 per cent for non-Aboriginal households. In up to 10 per cent of these cases children were harmed or threatened.

According to Statistics Canada, children are frequently the unintended observers of violence between spouses. Among those cases where violence occurred after separation, children witnessed at least one violent occurrence in 50 per cent of cases. (Hotton, 2001)

No Place For Violence, Canadian Aboriginal Alternatives says, "The long term effects of childhood maltreatment have been reported to include depression, substance abuse, school problems and lowered self-esteem, as well as self-destructive and aggressive behaviours." (Proulx & Perrault, 2000)

According to Statistics Canada, witnessing family violence is linked to negative behaviour in children. Children exposed to adults or teenagers fighting in the home are more likely to show physical aggression, indirect aggression, emotional disorders and hyperactivity. They are also more likely to commit delinquent acts against property. (Dauvergne & Johnson, 2001)

> **Children and youth with this type of bullying history are at greater risk to exhibit negative behaviours that actualize into anti-social, destructive behaviour that once again puts them into the criminal system. We're talking about a breakdown of the family here, the breakdown of our traditional types of family systems.** (Speaker, Saskatchewan First Nations Women's Council presentation)

Violence in family lives of children is connected to violence in the schoolyard, among such children themselves and with their peers. Children who witness violence at home do not learn to deal with conflict through negotiation. Rather, they come to believe that problems are best solved through aggression. Wendy Craig, associate professor in psychology, Queen's University, told a Violence and Aggression Conference in Saskatoon about the chain linking power and aggression.

Recommendation 3.2

This Commission recommends that education systems, Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan, and others, support the introduction in kindergarten and Grade 1 of: non-violence alternatives, information about violence in its many forms, the effects of such violence and solutions thereto, including the responsibility shared by all to eliminate violence, and that it be reinforced in subsequent grades.

Sexual exploitation of children is a growing problem in First Nations and Metis communities in Saskatchewan's cities, according to the Legislature's Special Committee to Prevent the Abuse and Exploitation of Children through the Sex Trade. In June 2000 the committee presented its interim report to the Legislative Assembly. It found that there were 261 child prostitutes in Saskatoon and more than 300 in Regina. A high percentage of these children were First Nations or Metis. Sexual acts with these children are an abuse of power over children.

As of April 26, 2004
- 166 vehicles have been seized as part of the VISE program
- 130 released on john school program

(Saskatchewan Justice and Corrections & Public Safety, 2004)

Having become aware of this problem, agencies and governments are working to eliminate it. One aspect of the provincial government's strategy to reduce sexual exploitation of children and youth has been the Vehicle Impoundment Against Sexual Exploitation (VISE) program. Police can seize a vehicle being driven in the course of committing a Criminal Code offense related to sexual exploitation. The introduction of a new section to the *Highway Traffic Act* also made it an offence to repeatedly drive or park a vehicle in a sex trade area.

It is necessary to note that not every child who witnesses violence will become an offender. There is enough research, however, to know that violence can harm a child's ability to succeed and to hope. "Trauma, chronic conditions and life challenges all assault hope. One way of eventually coping is to stop hoping," says Dr. Ronna Jevne in *Magnifying Hope: Shrinking Hopelessness*. Her paper talks of the importance of hope in our lives. She says, "I think of hope simply as a small voice in the heart of each of us that yearns to say 'yes' to life. If nurtured and strengthened it invites, encourages, pulls, pushes, cajoles, and seduces us to go forward ... Persons who have repetitively had trust violated appear to have more difficulty sustaining hope. The earlier the violation, the more severe the developmental delay of hope. Without the experience of hope, people do not feel safe in the context of uncertainty and will do what they need to do to feel some level of control over their own life."

Nutrition

Nutrition is something rarely discussed in relation to violence. Poor nutrition becomes a daily problem for children of families struggling with poverty, substance abuse and other issues. Meal times may be unpredictable. Food choices may be based on advertising or on cost. Meals may be obtained outside the home, if at all. All this can have consequences for the behaviour of children and adults. Several researchers have found that a change in diet can reduce anti-social behaviour.

> **You can tell the health of a nation by the number of members in jail.** (Eric Shirt, founder of Poundmaker's Treatment Centre, Alberta)

In *Diet, ADHD & Behavior*, (Jacobson & Schardt, 1999) a recommendation was put forward about children and nutrition:

Government, private agencies, and health practitioners concerned about children with ADHD and other behavioral problems should acknowledge the potential for diet to affect behavior and should advise parents to consider modifying their child's diet as a first means of treatment.

"Child hunger increases the likelihood of poor school performance, of behavioural problems, of school drop out and of criminal activity … Research has also shown that every dollar spent on children's welfare and education creates future savings in health care, criminal justice and welfare costs. Canada remains the only western industrialized country without a national school nutrition program." (Ottawa Centre for Research and Innovation, 2003)

Recommendation 3.3
This Commision recommends that all schools, with a high number of children who are living in poverty, implement a school nutrition program.

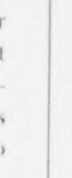
Children and Corporal Punishment

Corporal punishment is usually used for disobedience or situations where there is a threat to a person or to property. Some believe that children will not learn obedience to authority unless it is instilled through punishment.

The authors of *Child Corporal Punishment*, Watkinson and McGillivray, say that research has shown a relationship between receiving corporal punishment and showing aggression towards siblings and parents. This was discovered by studying pre-schoolers, school-aged children and adolescents. Children who are physically punished are more than twice as likely to attack a brother or sister repeatedly than those not physically punished. In addition, their article says that youth physically punished as children are three times as likely to assault non-family members as those who were not. Adults frequently punished physically as children are far more likely to assault spouses and children than those who were not.

The United Nations in 1994 recognized a need to protect children when it passed the *Convention on the Rights of the Child*. Corporal punishment was deemed to be incompatible with the Convention of the Rights of the Child. Canada is one of 192 countries who approved it. The human rights of children and the standards to which governments must aspire to realize these rights are outlined in this Treaty. The Treaty reads:

> **The Convention provides a universal set of standards to be adhered to by all countries. It reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and a member of a family and a community, with rights and responsibilities appropriate to his or her age and stage of development.**



> **Recognizing children's rights in this way firmly sets a focus on the whole child. Previously seen as negotiable, the child's needs have become legally binding rights. No longer the passive recipient of benefits, the child has become the subject or holder of rights.**

Nevertheless, the Supreme Court of Canada in January 2004 upheld the use of spanking children but held "... Corporal punishment of children under two years is harmful to them, and has no corrective value given the cognitive limitations of children under two years of age. Corporal punishment of teenagers is harmful, because it can induce aggressive or antisocial behaviour. Corporal punishment using objects, such as rulers or belts, is physically and emotionally harmful. Corporal punishment which involves slaps or blows to the head is harmful. These types of punishment, we may conclude, will not be reasonable..." *(Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General),* [2004] S.C.J. No. 6).

This Commission believes parents are responsible for their children and that there are many non-violent ways to encourage good behaviour from children.

Recommendation 3.4
This Commission recommends that all governments promote the use of non-violent alternatives to child correction. Steps must be taken to ensure laws, policy and practice comply with the direction provided by the Convention on the Rights of the Child.

Chapters 2 and 8 of this report have a strong focus on children and youth.

Men and Violence

> **I see our men suffering today. The men are being robbed of their dignity, their spirituality, their morals. Our prisons are overpopulated with men. Our streets are overpopulated with men, homeless. The men have suffered a long time, and their oppression, their violence, their actions, their attitude [are taken out] against their opposite partner, towards women, mothers, aunts, grandmothers.** (Speaker, Treaty Four Governance Institute)

Meadow Lake Tribal Council developed the *Wounded Warrior* program for men to deal with family violence in the community. *Wounded Warrior* was designed for men who abuse their partners. It is a support and healing program to help men talk about family violence and their sense of frustration. Once the men felt comfortable in the group, they would talk about abuse, their identity as a male, their worth as an adult male in a community, their frustration with lack of employment opportunities and the little value given to what they had to offer. (Meadow Lake Community Dialogue)

A report on domestic violence reviews characteristics of Aboriginal and non-Aboriginal cases from the Winnipeg Family Court:

> **The majority of Aboriginal accused (66 per cent) were on social assistance and the majority of the non-Aboriginal accused (53 per cent) were employed. These statistics reflect the tremendously disadvantaged economic status of Aboriginal people in Canada today. It also reflects the reality, observed in most criminal justice studies, that the majority of people who come to the attention of the law are people of low socio-economic status.** (Ursel, 2001)

In their book, *Moving Towards the Light*, B. Wood and J. Robson find that most men realize that to let go of violence and abuse means taking another look at their violence towards women. This can be threatening. If people feel there is little to their identity beyond their negative qualities they will fear giving them up. The authors say they have met men who have established their identities around their violence. It fills an empty place inside. Some men would rather witness fear in others' eyes than not be noticed at all. They suggest:

> **Men must be given information on violence that concerns them. The information must be easy to understand. They must figure out the causes of violence and look at their ideas about women and previous victimization. They must examine their personal history and what they think about power and self-esteem.**

Where is the government support resources? Where is all these places where a man can go when he needs help? (Speaker, Black Lake Community Dialogue)

First Nations and Metis men who are charged are likely to find treatment for domestic violence a condition of sentence. The Domestic Violence Treatment Options Court in North Battleford makes men attend treatment if they have admitted to domestic violence. If successful, the men may receive a conditional discharge. This program needs to be looked at to see if it is effective in providing safety for women and treatment for men.

When the Commission held a dialogue with the inmates at the Regina Correctional Centre, some men said, "Domestic abuse is a family problem, not something that can be solved by throwing someone in jail." Men at the jail felt that family treatment is required, but not only for the man while he is away from his family.

> **... this is where the Aboriginal are very unique in our concept of life. There was no young people, there was no Elders, there was just a way of life that we lived. There was no women's prison, there was no young people's prison. We all dealt with a problem in our community together. So**

> **when we look at programming for ... into the transition and reintegration into the community, we can't segregate the youth, we can't segregate the women, we can't segregate the men from each other.** (Speaker, inmates dialogue at Regina Correctional Centre)

In the dialogues the Commission was told that there is a lack of domestic violence treatment for men in the community, especially in Northern Saskatchewan. (A program is offered in La Ronge.) Communities expressed a need to add First Nations and Metis cultural beliefs into treatment for men.

Examples of treatment programs can be found by contacting your local health district:
- Saskatoon: An Accountable Advocacy Program for Men Who Are Violent to Their Partners, also known as "Alternatives"
- Regina: Alternatives to Violence

> **Our penal systems or institutions are not meeting the needs of our Aboriginal people and assisting them to function in a healthy way once they are released. More men's programming is needed in these institutions based on our traditional and cultural teachings.** (Speaker, Central Urban Metis Federation Inc. presentation)

Recommendation 3.5
This Commission recommends that there be greater consideration given to delivering domestic violence programs that focus on dealing with partners and families.

Abuse and Neglect of Older Adults

> **Elder abuse is the mistreatment of an older adult by someone that they should be able to rely on: a spouse, a child, another family member, a friend, or a paid caregiver.** (Waterloo Region Committee on Elder Abuse, 2000)

National Survey on Abuse of the Elderly in Canada (Podnicks et al, 1990) says that four per cent of elderly Canadians living in private dwellings experience abuse and neglect. In the dialogues with community, concerns on issues for older adults were not raised. There is, seemingly, still much shame for a senior to admit that a relative is being abusive. The Caregiver Network in Ontario says there is a psychological consequence to being abused. Feelings of betrayal are overwhelming. Seniors are reluctant to report abuse because they do not want to see any harm come to their relative.

Saskatchewan Seniors Mechanism
(306) 359-9956.

In First Nations and Metis cultures it is common for grandparents to take part or full responsibility for the care of grandchildren. However, lack of parenting skills for grandparents and parents who attended residential schools can make this task particularly difficult. Young people, male and female, who do not use protection when engaging in sexual relations, must be prepared to take responsibility for the result of their carelessness. Older adults deserve to be given the respect of choice to raise a grandchild rather than having to do so because a family member has dismissed their responsibility. However, if assistance is necessary outside of the circle of family and community, children have the right to good care, and help must be readily available from governments.

There is a Grandmother's Circle in Regina being funded by Health Canada doing research on urban Aboriginal grandmothers. Students from the First Nations University of Canada are assisting the Grandmothers. While the research is not yet finished, grandmothers raising children is found as one of the main issues. Two findings so far are that grandmothers have no legal recourse if the parents of the children they are raising decide to take the children back, and grandparents are unable to get the status of foster parents and are pressed financially. There is also a concern that there is no support for the grandmothers, such as talking circles or a drop-in centre.

Older adults in the First Nations and Metis community respected for their wisdom, knowledge of traditional culture and spirituality are often termed Elders. They are in demand to pass on their knowledge to future generations and to educate those who want to include cultural content in programs. This knowledge is being seen more often as equally valuable as formal education but the service is often expected without the comparable remuneration. Elders of the First Nations and Metis community deserve the respect of similar compensation given to other experts when asked upon by non-Aboriginal organizations to offer knowledge and advice.

VICTIMIZATION, SUICIDE AND HOPELESSNESS

> **I see many suicide attempts. I see successful suicides. I've seen women beaten, and I have seen children beaten ... the potential solution, can be aided by people from outside, but it has to be started from the people within this community**. (Speaker, Black Lake Community Dialogue)

According to Saskatchewan Health, a person thinking about suicide is often unsure about doing it and simply wants to escape from a difficult situation. A person may be more likely to think of suicide or to take risks when under the influence of drugs or alcohol.

A document by Saskatchewan Learning (2000) says suicide rates have increased in most age groups over the past several decades. The most dramatic increases have been for adolescents and young adults. In Saskatchewan, suicide is one of the leading causes of death among youth.

Suicide is a major concern in many First Nations and Metis communities. The Canadian Criminal Justice Association (2000) reported suicide to be two to three times more common among Aboriginal peoples and five to six times more prevalent among Aboriginal youth.

The number of deaths in Saskatchewan in 2002 by suicide was 108. Firearms were used in 33 of these deaths. This was 1.2 per cent of the deaths in Saskatchewan and a slight increase over 2001. It is, however, a decrease from 2000 when the numbers of deaths were 129, with firearms used in 39. (Sask. Health, 2002)

In her paper, *Magnifying Hope: Shrinking Hopelessness*, Dr. Ronna Jevne made the following observation:

> **First, without hope, you die. It is that simple. There are many ways to die, but without hope, minimally you die on the inside. Many are taking their own lives. In Alberta, if you are male, over the age of 23 and under 84, you are more likely to die by your own hand than in a car accident. Members of the First Nations are disproportionately represented among those taking their own lives.**

Suicide is a community problem that needs a response from parents, health and education professionals, and other care providers. Over the past decade or so Saskatchewan Health has provided funding to child and youth mental health services in regional health authorities to deliver suicide prevention, intervention and postvention services with its community partners. One person speaking with the Commission suggested that some suicides are uninvestigated deaths due to drugs and asked that First Nations and Métis leaders make youth a priority.

CULTURAL CONTENT IN PROGRAMMING

The importance of respecting the cultures of First Nations and Metis people in programming was stressed in Commission dialogues. In Winnipeg, the Native Clan Organization began a sex offender treatment program in 1987. Before it began to include Aboriginal content, there was a high dropout rate by First Nations and Metis offenders. Lawrence Ellerby, a psychologist and facilitator for the program, says, "Attending to cultural issues and incorporating healing practices into sexual offender treatment has facilitated the process of change and supported men to work towards balance in their lives ... offenders cannot be viewed in isolation but need to be considered in the larger context of their connections with others, such as their family and community and with the land or Mother Earth." While this approach increased participation of First Nations and Metis offenders, their relapse rate was similar to that of non-Aboriginal offenders. (Proulx & Perrault, 2000)

The Commission toured the Healing Unit at the Saskatchewan Penitentiary. The unit, under the Pathways pilot program, is staffed with Elders, Aboriginal program officers, and Native liaison officers. Treatment is offered under: Ma Ma Wi, ASAP (Aboriginal Substance Abuse Program), FLIP (Family Living Improvement Program), Native studies, Aboriginal sex offender treatment Program and In Search of Your Warrior.

Elders have improved the lives of imprisoned men and women as well as those in the community. Indeed, federal programs, such as In Search of Your Warrior, have relied heavily on traditional teachings passed down from Elders.

> **The importance of having healthy Elders is significant as individuals in Elder positions at correctional institutions [and elsewhere] have a great deal of influence over the**

> **people they work with, many of whom are quite vulnerable. Conversely, there are some incarcerated individuals who are quite controlling and manipulative who can easily take advantage of and exploit an individual in an Elder position who is not really a Spiritual Elder or who is an Elder struggling with personal issues and behaviours. Therefore, it is important that these individuals be credible, skilled and gifted.** (Proulx & Perrault, 2000)

Certainly, the same can be said of any professionals treating violent behaviour.

Most violence treatment programs for men deal with anger management, safety planning, parenting and sexuality. They teach skills that can replace violent responses. In addition, the Commission was told of the importance of treatment for First Nations and Metis people which includes discussions on the effects of colonization, residential schools, parental abuse and racism. First Nations teachings, such as acknowledgement of a Higher Power, the traditional and spiritual roles of men and women, and ceremonies such as the Sweat Lodge, can also be part of the program. There can also be individual and group counselling. The Metis Nation – Saskatchewan wants to provide Metis-specific treatment. There is a strong feeling that treatment given to First Nations and Metis people be provided by First Nations and Metis people.

The Commission also listened to a presentation from the Assembly of First Nations Christian Ministers. They are committed to healing for First Nations people based on Christianity. They were concerned that First Nations youth and adults who are in the justice system are not being provided with the spiritual support from First Nations people with a Christian perspective who could also provide cultural content and community support. They expressed a willingness to do so.

Northern Saskatchewan

Women of the Dawn reported that First Nations and Metis communities in northern Saskatchewan complained that criminal justice solutions to family violence do not work for them. Usually the offender is flown out of the community to serve a sentence in the South. There the offender may or may not receive treatment. Removed from the community the offender loses many supports. Too, a Cree Elder in a southern prison may not be helpful to a Dene offender because the Dene language and culture are different. Upon release, an offender may return to the community, but may not be accepted. Family support will be lost and without it violence may resurface.

> **It just seems to me that we're dealing with the same people all over again. But I also see that eventually they get into a real, real major crime because putting them in jail doesn't help them. When they come out, they're more violent towards their partner, even if it's a different partner.** (Speaker, Victims and Violence Roundtable)

The submission from Metis Family & Community Justice Service Inc. recommended more funding and training for victim services in rural and northern communities, with a focus on hiring Metis people.

Recommendation 3.6
This Commission recommends that all levels of government ensure that family violence programming for men and women is supported and more available.

Recommendation 3.7
This Commission recommends that the Government of Saskatchewan develop public awareness materials related to violence specifically suited for the needs of northern residents. To ensure that material is suited for needs in the North, there must be consultation from northern residents, including young people.

RESPONDING TO VIOLENCE AND VICTIMIZATION

In the ordinary response to violence and victimization, a victim and an offender are identified. The offender is charged and put through the criminal justice system. The offender may be sentenced and ordered to take drug and alcohol treatment or family violence counselling. The offender is confronted with the problem in a way that can cause defensive behaviour and possibly anger towards the victim.

> **[To focus on] safety issues for women and children when offenders remain in the community, with little or no supervision, and no police presence, and outdated ideas about women make judgments unfair**. (Speaker, Metis Women's Council Inc. presentation)

If applicable, family violence treatment must be linked to substance abuse. The Urban Native Family Violence Project in Lethbridge found that when violence got worse, alcohol was the trigger, according to 56 per cent of the women. Alcohol was named as a factor in their victimization as children by 46 per cent of them. The Women of the Dawn in their presentation said there was immediate need for an urban, long-term, residential, family drug and alcohol treatment and research service. It should also deal with violence. Acceptance of individual responsibility that would encourage participation was also necessary. They felt programs must be targeted at younger adults, teens and children.

The dialogues pointed to a need for proper training of all people working with violence programming and victimization. They should consult Elders, police, victim service workers, teachers and others in the community.

a) Sentencing Circles

> **That's why I said when you put a person into a sentencing circle, he has to make some commitments in there with our Creator.** (Speaker, Treaty Four Governance Institute Community Dialogue)

The Metis Women's Council was concerned about sentencing circles to deal with domestic violence. The council said women were troubled about participating. Safety was a primary issue. Speaking to the offender in public can be terrifying. The offender may threaten the victim before or during the meeting, or punish her afterwards. Some women find it difficult to tell their story because they receive little support from other group members who lack awareness of the consequences of family violence and sexual assault.

Another view was presented about victims and offenders attending sentencing circles together. Properly conducted, circles can be a helpful experience for the victim, the offender and their families. While the current justice system allows victims to read their victim impact statement in court, the victim seldom gets an opportunity to speak freely. This can delay recovery. In circles, victims have an opportunity and are even encouraged to tell their stories in the company of supporters. This can help the victim recover by removing shame and blame. In a circle, when an offender faces the victim, the usual result is an apology, which is valuable for the victim. Don Meikle, formerly with Restorative Circles Initiative in Saskatoon, says circles can fail when the victim is not supported before, during and right after this traumatic event. An aftercare program is needed, he says.

Restorative Circles
Initiative
206-119-4th Avenue South
Saskatoon, SK
S7K 5X2
Phone (306) 978-4646
Fax (306) 978-4647

The Prairie Region of the National Parole Board has reached the same conclusion. The Board conducts some community-assisted parole hearings. They are led by an Elder using the circle concept. On a few occasions, these hearings have included the female victim of a male inmate. Healing between victim and offender was evident. It was more evident when a lot of work was done with both parties, separately and before the hearing, and there was support for them at the hearing. Rupert Ross in his book, *Dancing with a Ghost*, suggests another approach – two Elders, one for the victim and another for the offender, who provide private counselling, and convene a circle when they feel cleansing has occurred. This avoids public confrontation of the two parties. (Ross, 1992)

b) Mediation

Mediation is another way to address domestic violence. This involves one or two mediators as well as the victim and the offender. Mediators must be highly skilled. The purpose of the meeting(s) is to work out a solution suitable to both parties. Mediation gives the accused person the opportunity to responsibly discuss and resolve the incident. If the parties agree, the mediator can facilitate an agreement between victim and offender.

Mediation is not a new approach. Saskatoon Community Mediation Services, for example, has been operating since 1983. Their purpose is to work toward and advocate for means by which people can live in more respectful relationships, institutions can foster more supportive interactions and the community can be meaningfully involved in developing a peaceful and safe environment for all people. This is consistent with the vision of the Commission.

While their opinion is not shared by all, researchers Jo-Anne Wemmers and Marisa Canuto (2002), advise against mediation in the following cases:

- The victim has suffered injury.
- A gun was used to threaten the victim.
- The violent behaviour is repetitive.
- There is not equality of bargaining power between parties.

> **But it's controversial. I mean I've heard debates on both sides in terms of restorative justice with sexual abuse cases, you know, but I guess my feeling is, it depends on the person and it depends what the victim is wanting, and the supports that are there.** (Speaker, Roundtable on Victims and Violence)

If choosing mediation or a sentencing circle, preparing victims for a meeting between victim and offender as well as follow-up counselling is essential.

c) *Victims of Domestic Violence Act*

The legislated response in Saskatchewan to violence is a pro-charge policy in cases of domestic violence. This is intended to stop violence at the time of crisis. When a violent act has taken place, charges are laid, even if the victim is opposed; it is always up to the police and Crown prosecutors to decide whether to lay charges, based on the evidence. This is a strong statement against violence. Many people working to eliminate violence praise this policy.

Another view of the policy is that simply removing and treating individuals does not solve a problem that belongs to the community. Many people in the dialogues asked to have justice returned to the community. The victim and offender, with help from the community, need to see their behaviour in a broader context. It removes people from the community and can cause isolation and possibly hostile feelings towards the victim. As well, the offender is not held responsible to the community.

The seriousness of domestic violence has resulted in the *Victims of Domestic Violence Act*. In its presentation, Justice and Corrections and Public Safety described options for victims as follows:

The police apply for an emergency intervention order to have an offender removed from the home or be present while either party removes property from the home. A special Justice of the Peace issues emergency intervention orders after looking at:

- The nature of the violence.
- The history of the violence by the offender against the victim.
- The immediate danger to persons or property.
- The best interests of the victim and any child present.

If the situation is not serious enough for an emergency intervention order, and it is believed the case can wait until a court hearing, a victim can apply to the Court of Queen's Bench for a victim's assistance order. This order contains all of the conditions of an emergency intervention order. In addition, a judge may order an offender to give money to the victim, give a victim temporary possession of personal property and forbid an offender from talking to the victim, the victim's family, co-workers or boss.

Another option for families under the Act is the warrant permitting entry. An offender may try to prevent people from contacting the victim. A Justice of the Peace can issue a warrant that allows a police officer to enter a building to check if this is happening. A warrant permitting entry can also be used to remove a victim in cases where medical attention may be necessary for the purpose of assisting or examining the victim.

These are temporary but immediate responses to victims' needs in times of crisis. There is a concern that First Nations and Metis women are not using the Act. There are also some difficulties with the application of the Act, particularly on reserves. It has been said that women on reserves have no access to the matrimonial home as the First Nations band owns the property. It is also not clear if the province has the right to enforce its orders on reserves, which fall under federal authority. Some bands have addressed this problem by passing bylaws stating that the *Victims of Violence Act* applies on-reserve. These issues need immediate attention.

Recommendation 3.8
This Commission recommends all levels of government immediately resolve the jurisdictional dispute around the *Victims of Domestic Violence Act* on Indian reserves.

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d) Shelters

> **So for me, it's very important that people see that they have to be visible in our communities, and right now we have nobody — I don't have no victim services to go to, to say that this is where you can take your child if your child's**

> **being victimized, because you identify it but you still don't know how to help your child, because you still don't even know how to help yourself**. (Speaker, Black Lake Community Dialogue)

According to Statistics Canada during one year ending March 31, 2000, some 57,200 women and 39,200 children were admitted to 448 shelters across Canada. The majority were fleeing violence at home. Three-quarters of the children were under 10 years. (Dauvergne & Johnson, 2001)

In the North there is an acute lack of shelters for victims. There are shelters in Prince Albert, La Ronge and Meadow Lake, but isolated communities have no shelters. As a result, many victims remain in violent and unhealthy relationships.

> **[There is a need for] a shelter in this area, so that families are not broken up, so that we are not trying to send our women south. That is not successful for the family, for the area or for the woman, because the woman gets torn away from her family and her supports. There is no way of doing the healing that far apart**. (Speaker, Black Lake Community Dialogue)

At the same time, a concern was expressed to the Commission over setting up a safe shelter in a small community. There would be no anonymity for the victim and the perpetrator would likely be living in the community.

> **Shelters are sometimes criticized as not solving the problem, or only partially addressing the problem. The reality is that many women and children both on and off-reserve require the protective services provided by women's shelters. Many owe their lives to shelters, and have brought about drastic changes in their lives with the support of shelters. The need for shelters will be eliminated only after family violence has been eliminated.** (Kiyoshyk, 2001)

First Nations politics on reserves were raised. If a First Nations member needs to travel to a shelter outside the community, the First Nation must pay travel costs. The First Nation must also pay for the member's stay at the shelter. The YWCA told of the problem with payment:

> **So for a woman fleeing domestic violence to go into a transition house, she has to come into the city ... So to get authorization for a woman to stay in a transition house, we have to get the band to pay for it, and that completely breaches a woman's confidentiality because, I mean, realistically, I mean, I've got to call a band financial assistance worker and get her to authorize her stay ... And they don't get the assistance that they require and deserve because their stays are shorter, due to the funding problem that exists because of that**. (Speaker, YWCA presentation)

Some women also complained about band politics being a problem when they request help. The Chief and council are often men who may not understand the seriousness of the issue. The request has to be made to a band office employee who may also be a family member. It was suggested at a dialogue that if First Nations governments were held accountable for funding accommodation at a shelter, domestic violence issues might be taken more seriously.

Recommendation 3.9
This Commission recommends that the Government of Saskatchewan or First Nation Councils or Metis Nation – Saskatchewan, whichever is appropriate, ensure that transportation is provided to women seeking shelter from violent situations and that adequate funding be provided for their stay.

Recommendation 3.10
This Commission recommends that:

3.10.1 There be funding from all governments to increase the number of beds available for women seeking safety from domestic violence situations;

3.10.2. Funders providing resources to shelters ensure sufficient funds for the agencies to provide more training to their staff and more outreach to communities.

Maria Hendrika from the Regina Transition House said:

> **We are not making violence go away. We are giving the victims, or the survivors, if you prefer to use the term, some tools. Hopefully, tools that will help them make some decisions that will facilitate some change in their lives so down the road they aren't put in a place where they will be victimized again.** (Board of directors from the Provincial Association of Transition Houses [PATH] presentation)

The YWCA in Saskatoon expressed concern to the Commission that its shelter staff is not given enough information when a woman is brought to the shelter.

> **But some of our concerns include City of Saskatoon police dropping off women to stay at the shelter and not providing adequate information to shelter staff, so that we can help the woman to the best of our ability.** (Speaker, Saskatoon YWCA Crisis Shelter)

Infinity House in Saskatoon is another safe house for women. The staff said that more information would help to assess and assist a woman brought to the facility. It said there is little consultation before a housing requirement is placed in a court order.

For a listing of shelters see A Guide to the Law for Saskatchewan Women. To get it this free publication, contact PLEA, 300-201 21st Street East, Saskatoon, S7K 0B8, (306) 653-1868 or http://www.plea.org

Recommendation 3.11
This Commission recommends that agencies providing shelter services to women and police services meet to find a solution to the issue of sharing information within the parameters of the privacy legislation.

Unfortunately, these recommendations do not eliminate violence. Leaders and members of First Nations and Metis communities must take more responsibility to eliminate the problem. It is also necessary for lawyers, judges, prosecutors and police to receive sensitivity training on domestic and sexual violence issues.

c) Integrated Services

A report published by the Aboriginal Nurses Association of Canada and Royal Canadian Mounted Police, *Family Violence in First Nations and Metis Communities: A Review*, states:

> **There is an urgent need to establish multi-disciplinary teams in developing a community approach to facilitate a formal networking system among the health and social service providers working in First Nations and Metis communities. Forums need to be held to discuss these partnerships ... For example, in many communities the health centres provide space for conducting healing circles, men's therapy groups, women's groups, and other activities such as art therapy. However, adequate resources need to be in place.** (Kiyoshyk, 2001)

Teams made up of several disciplines have been usually referred to as integrated services. Such services, experience has shown, reduce costs and improve benefits for the client.

Infinity House in Saskatoon told the Commission about its partnership of services. Trina LaRose, assistant director, Infinity House, spoke at the presentation by the Central Urban Metis Federation Inc. She said Infinity House holds inter-agency intervention meetings with a client, the client's counsellor and other agencies. A child protection worker, a family worker or a probation officer might represent these other agencies.

The Commission is aware of an effort within the Saskatchewan government and within the community to integrate services for violence. Two examples are:

- Saskatchewan Justice co-chairs the Interdepartmental Committee on Family Violence with the Department of Community Resources and Employment. This Committee supports an integrated approach to family violence and directs application of the Government Family Violence Policy Framework and Strategy. It also oversees Saskatchewan Towards Offering Partnership Solutions to Violence (STOPS), a program also supported by Saskatchewan Health.

- Regina Police Service, in partnership with Family Service Regina, has a domestic violence unit which brings together agencies that share information on client and community needs.

WHAT WORKS – BUILDING ON SUCCESS

The Commission received a lot of information on programs for victims. A few of them are presented here because they may be helpful to readers and because good work should be celebrated. This does not discount the need for more services.

Families and Schools Together is a violence prevention program in which families gather at school and take part in research-based activities designed to strengthen families and increase parents' influence. Families participate in eight weekly, team-led sessions to advance social participation, improve academic success and enhance healthy lifestyles. This approach helps parents to become important supports for their child and full partners with the school. A two-year, monthly, parent-led program called Fastworks follows the eight-week series. Data on more than 1,000 families show improvement in children's behaviour, family functioning and family-school involvement. Family Service Saskatoon and Catholic Family Services of Saskatoon offer the program.

Catholic Family Services sponsors a program called *Children Exposed to Violence in Families*. It seeks to introduce children to non-violent problem solving and helps them to develop a safety plan. The group meets weekly for eight weeks. Funding comes from Victim Services, Saskatchewan Justice. Catholic Family Services also delivers a program to assist parents less than 22 years of age who are in full-time education.

HOPE, which stands for *Honouring Ourselves and People Everywhere*, is a program in Prince Albert. It works to create a more peaceful school environment. HOPE lessons are delivered weekly to the whole school. School lessons shut down for an hour and everyone – teachers, students, even the janitor – attends a HOPE lesson. The Parent Council has HOPE lessons as well.

The *Circle Project Association Inc.* runs in Regina. This program supports families and helps to strengthen at risk First Nations, Metis and non-Aboriginal families as they work through the consequences of family violence.

In Saskatoon, families dealing with domestic violence can access the *Family Healing Circle Lodge* for support. It offers a support group and counselling for men involved in family violence. In addition, this program offers support to victims through counselling and assistance in legal solutions.

In the Battlefords, victims, children, offenders and their families can get support from a family violence program run by *Kanaweyimik Child and Family Services Inc.*

The *Prince Albert Grand Council Women's Commission* provides healing from the consequences of family violence with a holistic approach. The program is available to families in the 12 First Nations communities of the Prince Albert Grand Council.

Operation Help is a non-traditional, non-judgmental way of looking at the victimization of women in Saskatoon's sex trade. The support circle is set up the night police conduct their sweeps. However, instead of being arrested, the women are offered guidance from professionals – Elders, lawyers, court workers, police, outreach workers and social workers. Advice is given on issues such as addictions, abuse, housing, finance, and family and medical services.

SUPPORT FOR VICTIMS

The final report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation (2001) found that spousal abuse victims were more likely to agree to be witnesses if they were supported throughout the case. Support was described as financial and childcare assistance and timely information from the justice system about the status of their case.

Aboriginal Resource Officers work in Regina, Saskatoon, North Battleford, Prince Albert, La Ronge and Yorkton.

Through funding from the Victim's Fund, Saskatchewan victims get support in most centres from municipal police and RCMP victim services. (The Victim's Fund collects surcharge revenue from fines levied on offenders.) There are eight Aboriginal Resource Officers in six centres. Three centres have victim-witness coordinators. More than 350 victim services workers and volunteers work out of about 50 RCMP detachments to provide services to First Nations and Metis victims.

There were requests for more victim services, particularly in the North. The Aboriginal Resource Officer program helps First Nations and Metis victims and their families by providing information, support and referral in larger towns and cities. With the exception of La Ronge, there are no Aboriginal Resource Officers in the North.

Aboriginal Resource Officers are part of the victim services team. They are the liaison between the police and the First Nations and Metis community. They provide prevention and early intervention and help victims and their families get culturally sensitive information and support.

The federal government does not fund Aboriginal Resource Officers on reserves. Federal funding is, however, provided to four communities for caseworkers who assist victims of crime on-reserve as part of the First Nations Policing agreements.

Recommendation 3.12
This Commission recommends that the governments of Canada and Saskatchewan expand Victim Services in the province.

The Correctional Service of Canada and the National Parole Board both provide, at a victim's request, information about transfers, hearings, releases or revocations during the sentence of an inmate.

The Domestic Violence Emergency Response System in Regina provides a personal alarm system for protection from assault by a woman's partner. A protection order must be in place to receive it. This is a co-operative measure from Transition House, Isabel Johnson Shelter, Wicihik Iskewak, Regina Women's Centre, Mobile Crisis, SaskTel, ADT Security Systems and Family Service Regina.

EVALUATION

The final report of the Ad Hoc Federal-Provincial-Territorial Working Group Reviewing Spousal Abuse Policies and Legislation identifies essentials of an effective domestic violence program:

- It deals with the impact of the abusive partner's violence on the children.
- It ties the program with services for victims and their children so victims can do something about their safety.
- It measures the offender's ability to succeed in the program and its suitability to the offender's character.
- It gets offenders into the program as soon as possible after arrest.
- It is closely tied to probation and court so offenders can be monitored regarding obedience and program participation.

The Aboriginal Friendship Centres of Saskatchewan (2004), in their submission to the Commission said:

> **In addition to minimal funding it is also granted on a short-term basis and we suffer the "pilot project" problems that many others face. Long term core funding provided to the Centres based on sound accounting principles must occur. This funding needs to be tied to evaluation schemes, which everyone knows about in advance.**

Recommendation 3.13
This Commission recommends that the Government of Saskatchewan provide funding to study the effectiveness of domestic violence programming.

Dr. Ronna Jevne said in her submission that program evaluation should consider the element of hope. She feels that risk assessment used for prisoner rehabilitation might benefit from including the promise of hope. Without hope, the reason to change is minimal.

> **Hope can be intentionally learned, strengthened and repaired ... To date there has not been a study of what can be done to enhance hope in people in the justice system, offender or worker.**

The misuse of power and its unequal distribution destroy hope. Those fortunate to have employment, good health and income above the poverty line must become responsible for building hope in those struggling to find it.

> **The seeds of hope are worth planting. Although it is satisfying to people who need the language of accountability to see indicators of hope early in the process, time is a factor in the growth of hope. Interventions aimed at outcomes that are evidence-based on the short term may be premature and may risk being short lived in their impact. Projects aimed at longer processes need funding and support.** (Jevne, 2004)

Dr. Jevne's paper contains many helpful suggestions and is included in Volume 2 of the Commission's report. It is recommended reading for any "Champions for Change."

Recommendation 3.14
This Commission recommends to all governments that there be further study on the concept and impact of hope, with a view to including hope in programming and assessment.

FUNDING

Healing is a long-term process. Through their family and community, people gain a sense of identity. Victims and offenders are part of a series of circles, smaller within larger, that includes the global community and its responsibilities. Unity of mind, body and spirit with all things reduces violence. Not enough funding is a definite drawback to achieving important change. It was a concern, repeatedly, in the dialogues.

The Aboriginal Friendship Centres of Saskatchewan (2004) echoed the request of others organizations:

> **Due to the fact that we rely on minimal funding to function day-to-day and the fact that we are the family/community of people we serve, we too are in constant reactive mode. As a result of this we are only able to scratch the surface of the problems faced by various quadrants of the province's First Nations and Metis population. This impact is significant and it undermines our ability to truly keep an eye on all aspects of a person's life and to deal with the entire person. We are also reliant on volunteers in many of the centres, which have positive and negative aspects: we have dedicated people who truly know the issues and care about the outcomes, on the other hand, these people are expected to take on more and more as the needs increase and the result can be a crisis in their own lives. Volunteers are the**

backbone to First Nations and Metis communities and many are doing the work that other, government employees are paid to do.

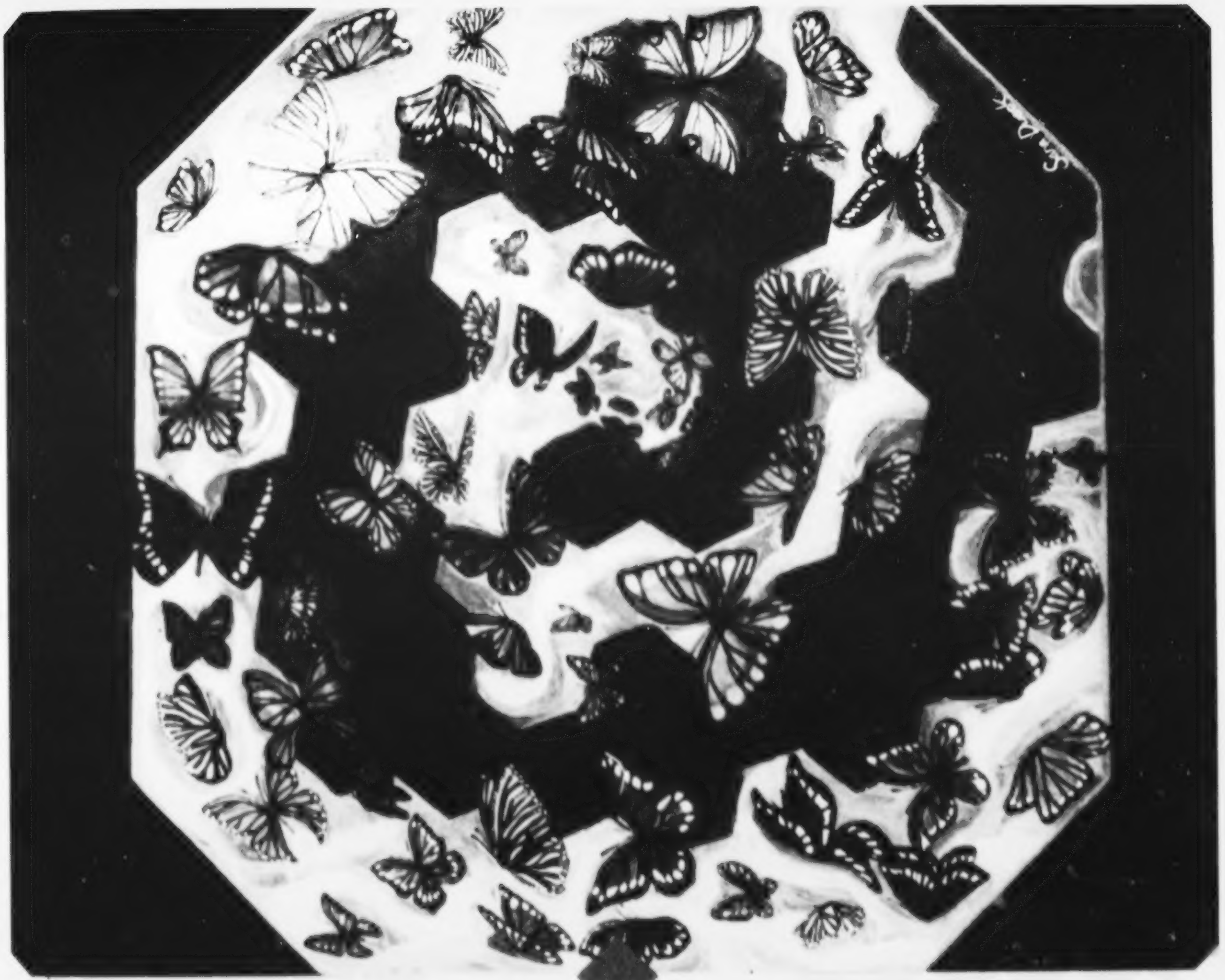
CONCLUSION

Much good has been accomplished but much more remains to be done to create a province free from violence. Although an overused expression, violence does affect all of us. It certainly is not limited to First Nations and Metis people. Most people have been victims of violence, but there are degrees of it. Some will have suffered less than others, but have been hurt all the same.

Violence can destroy hope. Violence can damage the body, mind, heart and spirit. There are issues of shame, humiliation, cynicism, isolation, normalization of violence, economics, fear of court, fear of police, lack of political will, lack of power, fear for children, lack of accountability. There may also be no awareness of community support. Unless these factors are brought into the open, violence will continue to occur and increase.

Dysfunction, especially those issues that are deeply rooted in a community, can cause service workers, such as the police and social workers who deal with these issues on a daily basis to become frustrated, stressed and jaded. They need systems in their own lives to keep their motivation and hope strong. Those who are not willing to offer support for change need to be challenged on their unwillingness to do so.

While it was disturbing to hear about the lack of services, the Commission was impressed by the services that are provided by the Saskatchewan government, community agencies and the partnerships that have come about. The Commission was impressed also by the willingness of people in communities to accept responsibility for healing and to offer support to those wanting to change. Their wish to be involved in the development and implementation of programming was also a good sign. All this can be described as a desire to return justice to the community. It takes the energy of everyone to support principles and hold faith strong enough to achieve non-violence and healing. We consider those who exert the energy to be "Champions for Change."



4

RESTORATIVE JUSTICE:

RESTORING JUSTICE IN SASKATCHEWAN

RESTORATIVE JUSTICE:
RESTORING JUSTICE IN SASKATCHEWAN

INTRODUCTION

"Restorative justice" is a term the Commission heard repeatedly in its dialogues around the province. Often referred to as necessary for justice reform, "restorative justice" has been defined in many ways. It involves the principles of repairing harm, healing, restoring relationships, accountability, community involvement and community ownership. The Law Commission of Canada calls this approach relationship-based. It reflects *opintowin*, Cree for "lifting each other up."

> **The values that are in restorative justice are there more in terms of empathy, information sharing, problem solving. It's designed to restore people to the community. It's built around principles such as involvement of all parties, a sense of healing and accountability. It unites what's been divided, and strengthens the community.**
>
> **What ultimately restorative justice is about is respecting people.**
>
> **Restorative justice is an alternative forum to dispute resolution; restoring relationships.**
>
> **What is restorative justice? We talked about fairness and about restoring or building harmony that included or involved community and, for lack of better words, victim and offender. So it would be a much more inclusive process. And it was a process that was future-focused on the healing and the building versus focused on the past mistakes.**
>
> **And it hopefully provides an opportunity to look at every situation and every individual separately and to do what's best in that particular circumstance; it has lots of flexibility.** (Participants at the Restorative Justice Roundtable)

The Commission believes these principles must be the basis for working towards a healthy, just, prosperous and safe Saskatchewan. To achieve this we will need self-determination for the individual, family and community. The work must involve an integrated, co-operative and truly Saskatchewan approach to return justice to the community.

> **Justice to Aboriginal people has always been the preservation, the restoration of the primary imbalance within the lives of people. Justice has not been individualistic; justice has been for the collective whole.**

> **Sanctions have been used within Aboriginal communities, that is true, but that has been to maintain a balance and to maintain the harmony to bring it back. Sanctions are used within the Euro-Canadian system to punish, to get even. As an educator I have never known an instance where I was able to teach anyone anything by punishing him. You teach by reaching out and becoming a part of what they are doing. You engage them in the process.** (Speaker, North Battleford Community Dialogue)

The principles of restorative justice contrast with the practices of the formal criminal justice system. This contrast reveals the differences between the worldviews of First Nations and Metis people and the dominant society.

> **The current justice system is not trusted or respected by many First Nations people because First Nations have had no say in its creation, no say in the development of policies or laws. First Nations have had to endure attitudes of the practitioners and more than any other group of people we are disproportionately affected by the system.**
>
> **In terms of values, the use of the adversarial approach to resolving differences in the justice system creates winners and losers. This approach clashes with the concepts of First Nations justice which emphasizes the restoration of social harmony in the community. Social harmony requires the building and maintaining of strong family and community relationships.** (Speaker, FSIN Health & Social Development Presentation)

> **I wanted to talk about how we arrived into the provincial justice system because we're only about 108 years old and we're in a mess already. And justice in Indian country is respect, that's what justice is, but we don't know how to say it in our language, all we can say is justice. If we go back to our languages and try and find out what justice means, if you're Saulteaux or Cree, maybe you'll understand what justice is; it's respect for each other. Justice is not to get even, you know, he took my candy and I'll break your arm; it's not justice. You learn justice already in Indian justice, you learn it at home and you learn it in the community. Everybody provides justice. A lot of respect and compassion for each other, justice. It isn't calling the police because you did something. That's not justice to me. So I think what I would like to find out in everybody's mind, what is justice to you? What do you feel justice is? We're so ingrained with justice, calling the cops, having a lawyer involved, having a judge involved. To me that's not justice.** (Speaker, Cowesses Community Dialogue)

Justice delivery in Saskatchewan has relied heavily on punishment. First Nations and Metis people are not alone in their criticism of it. This adversarial pattern is often seen, according to the Law Commission of Canada, as being "too long, too costly, too complex, too punitive, and inaccessible or unresponsive to communities' concerns." Restorative justice, on the other hand, "refers to a process for resolving crime and conflicts, one that focuses on redressing the harm to the victims, holding offenders accountable for their actions and engaging the community in a conflict resolution process." (Law Commission of Canada, 2003)

Further, North American studies show that harsher penalties do not stop repeat offences. When compared with community measures, imprisonment and longer sentences were tied to more repeat offences, according to research by Smith, Goggin & Gendreau (2002). The Commission is aware that this new approach to justice may be viewed by many in Saskatchewan to be soft on crime or radical. However, the Commission believes the principles of restorative justice can be used to improve the outcome for both victim and offender. Applying these principles also promises to reduce the high number of First Nations and Metis people in the criminal justice system. These achievements, while decreasing the use of a costly criminal justice system, provide a benefit to everyone. For a cost-benefit analysis of change, see Chapter 9, Aboriginal Justice in Saskatchewan 2002-2021: The Benefits of Change.

Both the *Criminal Code of Canada* (pertaining to adults) and the *Youth Criminal Justice Act* (pertaining to youth) create space for restorative justice by permitting alternatives to formal court procedure. These alternatives may be used before charges are laid, or after, and allow use of restorative justice. (See Appendices 8 & 9.)

Another opportunity for using restorative justice is conditional sentencing, which allows people to serve their sentences in the community as long as they observe certain conditions. The *Criminal Code of Canada* and the *Canadian Corrections and Release Act* open the door for involvement of First Nations and Metis communities in corrections and parole and to restore people to their community. (See Appendices 10 & 11.)

The Law Commission of Canada describes the authorization in the *Criminal Code of Canada* for restorative justice as follows:

> **The sentencing principles set out in the Criminal Code provide legislative support for the implementation of restorative justice processes. Although the Code says that sentences ought to be proportional to the harm caused by the act, the principle of proportionality is balanced by another provision that states that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Moreover, recent amendments introduced, for the first time, a provision that explicitly refers to alternatives to incarceration – which**

> **might include sanctions agreed to through restorative processes – to be considered when a court imposes a sentence. This provision also emphasizes the need to give special consideration to alternatives in the case of Aboriginal offenders.**
>
> **In addition, imposing sentences is also an option in a restorative process. Considerable case law has been generated regarding the appropriate conditions for imposing a conditional sentence. The Supreme Court of Canada makes it clear that a conditional sentence is "generally ... more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations and promotion of a sense of responsibility in the offender" and that "restorative sentencing goals do not usually correlate with the use of prison as a sanction." Moreover, the Supreme Court points out that a conditional sentence, properly imposed, can meet the goals of both denunciation and deterrence.** (Law Commission of Canada, 2003)

The introduction to the *Youth Criminal Justice Act* lists the values behind this legislation:

- Society has a responsibility to address the developmental challenges and needs of young persons.
- Communities and families should work in partnership with others to prevent youth crime by addressing its underlying causes, responding to the needs of the young persons and providing guidance and support.
- Accurate information about youth crime, the youth justice system and effective measures should be publicly available.
- Young persons have rights and freedoms, including those set out in the United Nations Convention on the Rights of the Child.
- The youth justice system should take into account the interests of victims and ensure accountability through meaningful consequences and rehabilifation and reintegration.
- The youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on incarceration.

Saskatchewan has shown support for restorative justice in a number of ways. The Saskatchewan government has approved a Restorative Justice Strategy with the following goals:

- Enhancing community safety and protection.
- Reserving the formal justice system for the most serious of matters.
- Developing alternative measures for less serious crime.
- Strengthening communities by involving victims, offenders, government and community members in a balanced approach to criminal behaviour.
- Reducing crime by increasing offender accountability to victims and communities.
- Increasing public trust and public perception of the fairness of the criminal justice system.

The goals of the Restorative Justice Strategy are consistent with Saskatchewan's Aboriginal Justice Strategy, which aims to involve the First Nations communities in developing approaches to justice that are culturally sensitive, responsive to community needs, holistic in delivery and give authority to the community. Focusing on crime prevention, improving race relations and building bridges within the justice system will achieve these objectives.

This policy and legislation described above provide ample opportunity for using restorative justice at the community level. The Commission recommends changes to federal legislation and expansion of provincial policy, as explained in Chapter 6 – Justice Institutions. These adjustments would expand the provisions for community involvement and restorative justice.

It is the responsibility of all governments to make sure that legislation and goals are backed up with sufficient funding, training and support. While communities strongly back restorative justice, they are also wary of off-loading. They fear taking on responsibilities that government formerly looked after, without a shift in funding and training.

TRANSFORMING JUSTICE

The Commission was invited to attend a Symposium on Justice, coordinated by the Office of the Treaty Commissioner. During the symposium, several Elders provided instruction regarding the concept of justice as seen through the Treaties. Prof. John Borrows was invited to document the symposium. Prof. Borrows referred to the need for a transformation:

If you reformed a caterpillar you would get a better caterpillar, if you transformed a caterpillar you would get a butterfly.

> It is not enough to simply reform the way in which the criminal justice system operates, if all that implies is adding a few Indigenous elements onto the current system, however welcome they may be. It would be more valuable to talk of transformation; changing the way the system operates at all levels to take account of the Treaty relationship. Reform seems to connote taking what lies at hand, and making it better. Transformation seems to imply taking what exists, and making it different and even better still. While both processes start with what currently exists, reform only allows for change within a particular scope and context, while transformation permits change of both scope and context. If you reformed a caterpillar you would get a better caterpillar, if you transformed a caterpillar you would get a butterfly. Treaties are the path to the transformation of the criminal justice system because they allow the people of Saskatchewan to start where they are, while simultaneously reorienting the entire scope and context of how they approach and achieve justice. This metamorphosis would gradually alter the reach and framework of what could be accomplished to bring about peace and order in the province. It would provide a degree of comfort for current justice personnel because they would not change what lies at the heart of their jobs, though the range and context in which they carry out their work would be dramatically revised and expanded. They would still be expected to be good police officers, lawyers, judges, parole officers, etc., but they would be expected to practise their profession in a Treaty milieu, taking account of any change that Treaties would require.

The Commission agrees that transformation is needed. Transformation includes a change in thinking so that restorative justice is stressed at every opportunity. Along with this change in thinking is the shift in the role of communities, so that restorative justice can take place in an important way.

For transformation of the justice system to succeed, Saskatchewan society must no longer use the criminal justice system to handle social problems. Resources and support to individuals, families and communities must be provided before behaviour becomes criminal. Meanwhile, within the criminal justice system, officials must be encouraged to use sentencing alternatives. Transformation would change the way the criminal justice system treats people. It would have more understanding of the major impact this system has on people's lives. Saskatchewan residents expect to be protected from criminal behaviour and dangerous individuals. Important improvements can be made that will lead to transformation of justice delivery in Saskatchewan.

Justice Continuum
Alternate Measures
Courts

Pre-contact with Criminal Justice	Initial contact with Criminal Justice	Pre-charge-Diversion	Post-charge - Diversion	Incarceration	Re-integration

The Terms of Reference for this Commission spell out the goal of finding solutions for the future, and this has been our focus. The Commission believes that these solutions can be found in respecting the ability of First Nations and Metis people to assume their rights and responsibilities while working with all the people of Saskatchewan.

> **Restorative justice movement is not totally Aboriginal ... It hasn't moved far enough for us. There's the traditional justice, and there's restorative justice and there's Aboriginal justice. Restorative justice has melded some Aboriginal ideas and some different ideas ... so it's right in the middle. And for us we need the movement to go a little bit more further. So that's one of my issues that that movement has to accept more from the relationship, building relationship protocols and how people treat each other.** (Participant, Restorative Justice Roundtable)

COMMUNITY INVOLVEMENT

First Nations and Metis community members strongly support the natural role of community in justice at every stage. As noted by a number of participants in the community dialogues, the term justice is not confined to what takes place within the criminal justice system.

> **So we're talking about things beyond jail cells, things beyond judges, lawyers, police. We're talking about healing principles, forgiveness and looking beyond, why is this person this way? And that's what we talk about when we're talking about "community-driven" and "holistic"; it's just not the law or a situation where one size fits all. It's got to be community driven.** (Speaker, Federation of Saskatchewan Indian Nations presentation)

But again, growing up here I was always taught what was right and wrong. We were always told goodwill always overcome evil; virtue will be its own reward. Justice came automatically. (Elder, Treaty Four Community Dialogue)

Participation of community members all along the justice continuum is the foundation of a restorative approach. One Restorative Justice Roundtable participant suggested that restorative justice is anything you can do to keep everything in the community. This requires putting resources into the communities and making people who break the law accountable to their communities, as that's where they would go anyway, after custody. The Commission heard many times of the interest of communities to assume responsibility for further restorative justice, providing there was a needed shift in resources.

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> **Developing alternative forms of justice other than incarceration came up. The Criminal Code already allows for this. We have alternative measures built in. Sometimes we get mixed up between alternative measures and alternative forms of justice. Alternative measures is a program; alternative forms of justice is looking at the whole picture. And the Criminal Code of Canada allows us to do that. So it's up to the communities to come forward with new processes and new ideas.** (Speaker, Victims and Violence Roundtable)

Reform has got to go hand in hand with being a participant, communities and leaders. It's got to go hand in hand. We have some responsibility. (Speaker, Black Lake Community Dialogue)

Many examples of community involvement in restorative justice can be found throughout the province. At the Commission roundtables and community dialogues, participants were able to list numerous restorative community programs that they consider successful.

Alternative Measures programs provide the option of dealing with crime outside the formal court system. In 2003-04, eight tribal councils, six band councils, and twenty-two community-based organizations in Saskatchewan were delivering adult Alternative Measures programs. (Tomporowski, B., April 20, 2004)

Some communities are working on a whole range of justice initiatives.

> **One of the major institutions they're working on is the ADR, or alternative dispute resolution, and this leads directly, I think, to the beginnings of a reform with the justice system and how it affects First Nations peoples ... Mediation, adjudication if necessary. There is a lot of mediation work being done by Tribal Council justice coordinators. There are many community programs available. People are being trained in mediation and, if necessary, adjudication; in other words, if someone has to make a judgment, they will make a judgment, and we're going to talk a bit about that as part of the tribunal. And again drawing upon mediation, peacemaking traditions of our First Nations communities. So that's the general environment that we are working in terms of justice development.** (Speaker, Treaty Four Governance Institute Community Dialogue)

Community involvement in policing is taking place throughout Saskatchewan through police management boards or community police boards and community policing. Many communities have set up community justice committees that are able to play an active role in local justice issues. (For further related discussion on community policing, see Chapter 5 - Policing. Information on community justice committees can be found in Chapter 6 - Justice Institutions.) At the close of the Restorative Justice Roundtable, participants were asked what they thought would be the ideal results of successfully implementing restorative justice. Their shared vision supported a stronger and expanded role for communities:

> **Communities would have the tools and skills to be able to resolve their own conflict, not imposed by the government. They would be healthy communities, where everyone has the right to be part of the decisions and part of the result. There would be more positive and capable youth; a sense of growth and belonging, and a positive view of youth. Communities would be safer, with flexibility for positive growth. There would be shared, respected leadership and power, as well as creativity and flexibility in interpreting policy in the justice system. Funders wouldn't be dictating exactly how money could be spent, so more focus could be on the front-line rather than in administration, where currently people are kept busy securing dollars and making programs look like they fit the requirements. Eventually less resources would be needed, and investments could be made in other things and new ideas. Then you could feel hope and empowerment, and community spirit.**

CHARTING A COURSE

The Commission is convinced that restorative justice principles and the return of justice to the community will bring about the fundamental shift needed in Saskatchewan. Community interest combined with government effort promises to move justice beyond crime and punishment. While continuing to protect the public, the justice system would stress agreement and healing.

> **You can't take restorative justice out of its context of everything that affects the consciousness of justice, and so you can't divorce it from what happens in the field of education, health, childcare, governance, capacity, political relationships between the federal and provincial governments and First Nations communities and all of those things. That it has to be holistic, and we're not really just contrasting something with incarceration, we're talking about something larger. In fact, when we just contrast restorative justice with retribution, we miss an important pillar and that is the redistribution of the social justice aspect and that underlying all of this is that.** (Speaker, Restorative Justice Roundtable)

The Commission understands that problems exist, and that they are an important factor in First Nations and Metis people coming into contact with the criminal justice system.

> **Through my work I see we have a whole lot of families that need a whole lot of help, guidance, support. The cycle has to be changed; they are victims of a cycle. They too aren't choosing, maybe today I'll just let my kids run and do whatever. They're not making that choice but through the**

See Wachtel, T. (1999). Restorative Justice in Everyday Life: Beyond the Formal Ritual. International Institute for Restorative Practices. Accessible from http://www.restorativepractices.org/library/anu.html

> **situations that they're faced with and maybe they can't cope with, for whatever the reason, whether addictions are involved or poverty is involved.** (Speaker, Melfort Community Dialogue)

The Role of Healing

When speaking of restorative justice, First Nations and Metis people often say healing is essential for individuals, families and communities.

> **I think we have to start bringing our own children back to the community, teaching them the culture, and that way they respect the land, the people, and themselves ... You have to be able to forgive and start dealing with a lot of these issues on a personal basis, because if you don't deal with it from that perspective then it doesn't matter how much money you get, the problem is still going to be there.** (Speaker, Beauval Community Dialogue)

> **When I hear people express their pain, the pain that they have, that they carried with them all through their lives, and the anger that is created from that pain, and we talk about healing, I think that's part of healing, is forget the pain and the anger. That is something that we will never get rid of because it was an experience that we have come through and it becomes our reference for teaching our youth, for teaching our children. The main teachings of our great-great-grandfathers and great-great-grandmothers was to listen. The first teaching, listen. And you have eyes, you are blessed with eyes and that's to look, look around you. There is a lot of things around you that you can be grateful for. There is a lot of good role models around you that you can look up to. That's the way you learn.**
>
> **The second most important teachings of our ancestors was to get along with things and people. There are lessons in the universe and it's about the unwritten history, you know, your stories. The stories that you tell today are very important. You are important for all our children, our grandchildren, our great-grandchildren. We have a history behind us. We are history. Our history should be taught to our children by our Elders, the values, the beliefs of our people in all four directions, the unconditional love, respect, honesty, bravery, generosity, the love of nature, purity. The spirituality of our people is what has pulled us through all these trials and traumas in our lives.** (Elder, Dialogue with Elders of the Office of the Treaty Commissioner)

Research supported by the Solicitor General and the Aboriginal Healing Foundation found that personal and community healing in First Nations and Metis communities is just emerging and for this reason there are few assessments of it. However, they found this wide range of outcomes:

> **The healing movement is generating many levels of interconnected outcomes, which are hard to track and measure, especially using existing (culturally patterned) models and tools. While specific program interventions at the community level have a direct impact on individuals, so does the emerging climate within the community, the many activities associated with the growing cultural renaissance, the emergence of a growing number of inspirational Aboriginal role models at the local and national levels, the increasingly confident and positive portrayal of Aboriginal peoples and issues within the growing Aboriginal media, the resolution of key land claims, self-government initiatives, etc.** (Lane et al, 2002)

Healing will not work without such backup as parental support, childcare, healthcare, schools and treatment to meet routine and special needs. Paid community help to support recovery is important. Spirituality has often been referred to as fundamental to healing, and people able to provide it, whether traditional or Christian, must be available and respected.

> **I think if we can give families what they need to ground their family values and bring family back into the system, to identify with their cultural background and their needs, then they are the ones that are going to improve and provide opportunities and create initiatives.** (Speaker, Meadow Lake Community Dialogue)

Communities and governments are showing initiative in providing opportunities for restorative justice. For example, the Commission was told that on Thunderchild First Nation, the justice coordinator is holding talking circles where everyone can get to know one another and seek guidance from others. (Restorative Justice Roundtable) Similarly, men's and women's wellness circles are held weekly at Pelican Narrows. (Pelican Narrows Community Dialogue) Children are learning about conflict resolution and anti-bullying in schools. (Treaty Four Community Dialogue and Restorative Justice Roundtable) The integrated approach, which forms the basis of School^{Plus} holds great promise if embraced by school staff, service providers and community members. (Tymchak, 2001)

The Commission pictures a justice strategy that provides opportunity for restorative justice and community involvement at each step along the justice path. It would apply at the first contact with the justice system, through conditional sentencing or imprisonment, and end with acceptance by the

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And then we did the healing lodge, and that was a plus. I thought this is what we need more of in our communities ... It's for family healing, that's where it begins, in the family ... We need healthy people. (Speaker, Pelican Narrows Community Dialogue)

We need to inject significant healthy adults in the lives, continually and consistently, of young people, as the solution. (Participant, Restorative Justice Roundtable) community. The Commission sees each step of the justice path as an opportunity to restore individuals. The inclusion of community is vital, given that people will likely have ties to the community in each phase.

Step 1: Contact With the Criminal Justice System: Meaningful Options

> **You know, you want to build an individual and most individuals want to build themselves, and we go from that point, you know. If we can help them in any way to identify what their areas of need are and how we can support them in developing themselves as individuals, then they'll have a stronger family unit and a stronger community. I think we do a lot of programming in the area, throughout the whole continuum of care, starting with, you know, prenatal care all the way into adulthood, and our Elders are very much involved in all of our programming.** (Speaker, Meadow Lake Community Dialogue)

Some health problems, the Commission was told, are regularly handled by the criminal justice system. Among them are mental health cases and the increasing number of people with FASD in conflict with the law (as discussed in Chapter 2).

Mental Health

> **The deinstitutionalization of the mentally ill means people with severe mental illnesses are on the street, and money formerly spent on institutionalization is not spent on care in the community. So that means no one cares until there are problems, so nobody cares until you can't cross Broadway Bridge because they're screaming that God is telling them that they have to stop all the traffic. And that happens ... Often the YWCA and the Hantelman Unit are the only options available. And the reality is that we're not always able to assist them, and Hantelman is full ... So these people are on the street, and no wonder they're interacting with the criminal justice system ...**
>
> **The reality is that the police end up being like a taxi service for the mentally ill, moving them from, they're disruptive at the hospital, so they've got to go get them out of there and take them someplace else. So they bring them to the "Y" and they're disruptive here, so now they've got to come and remove them and take them over here. Like, literally. And we're talking about a large group of people, not a small group of people ...**
>
> **Again' the mentally ill, who cares about them until their behaviour becomes unacceptable and people call the police.** (Speaker from the Saskatoon YWCA Crisis Shelter presentation)

The Commission accepts that persons with mental health disorders or other disabilities such as FASD who come into conflict with the law are not receiving the specialized treatment they require from the justice system. In the majority of cases, the disability is not recognized or taken into account. These individuals may not understand what it is they have done wrong or the significance of any penalty. (More on this subject can be found in Volume 2 of this report – Fetal Alcohol Spectrum Disorders and the Justice System by H. Rae Mitten.)

In every case when it is evident that a person in contact with the law has a mental disorder or disability, police, lawyers and judges should make every effort to deal with the charge outside the criminal justice system. They should use a restorative justice approach as provided for by section 717 of the *Criminal Code of Canada*. This section provides that alternative measures, which are measures other than judicial proceedings, may be used to deal with persons who are alleged to have committed an offence, as long as protection of society, and certain other conditions, are met. (See Appendix 8.) One of these conditions is that any alternative measure must be a program authorized by the Attorney General or other authorized person. Therefore, the Commission also recognizes that authorized resources must be available to do this.

The secondary disabilities affected with this syndrome [FASD] are mental health problems, disrupted schooling, inappropriate sexual behaviour, alcohol and drug problems, which combined, often lead to conflict with the law. (Speaker, Prince Albert Town Hall Meeting)

Recommendation 4.1

This Commission recommends that every level of government support the education of police, lawyers and judges to recognize mental disorders and disabilities in order to divert these persons with mental disorders and disabilities to appropriate resources.

Contact With the Police

The first contact with the law can point the offender to a restorative justice process and, in time, a productive life. On the other hand, it can direct the offender to the criminal justice system where there is no shortage of negative role models and the myth that a life of crime pays.

> **One of the problems we have, certainly with the youth justice system is when we made our "great leap forward in civilization" and moved from the JDA [Juvenile Delinquents Act] to the Young Offenders Act, it was a colossal and foolish mistake. The big concern the federal government had with the Juvenile Delinquents Act was everything was too informal, nobody knew what was happening, and while that was something of a problem, there were other ways to correct it than by saying, "Okay, now we are going to formalize a justice system for kids." A number of us predicted then that we would end up in exactly the position we're in now, where we are turning youthful malfeasance into crime. And there are a great many of us, I think, in the prosecution's community who are**

> **thankful that we weren't 12 to 18 when that regime changed because we'd have criminal records, too. We do tend to rely on prosecution way too much, it's as simple as that.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The use of discretion and restorative justice for activities that do not pose a danger to the public will often mean the difference between a criminal record and prolonged involvement in the justice system.

> **I have a great concern in this community with the youth and the justice system. I think a lot of the young people, and I'm talking older teenagers, shouldn't have a criminal record for many minor things that they are charged for. I think it should be handled outside of court somehow by the community, the community members, the Elders, like a sentencing circle or whatever.** (Speaker, Pelican Narrows Community Dialogue)

> **You have a social worker who works Monday to Friday, 8:00 to 4:30. Crises don't happen during that time in people's lives ... we have this idea and we're actually pursuing it now, to have an adolescent crisis unit that works from 6:00 in the evening until 2:00 in the morning, where if – where we would have programming for our kids.** (Participant, Victims and Violence Roundtable)

First contact with the criminal justice system by First Nations and Metis persons is usually with a police officer. Because police are on call 24 hours a day seven days a week while other services are not, they respond to all types of situations. The police must have the ability to consider restorative justice while protecting the public. The Commission believes that often the police do not, or are unable to, consider restorative justice because of lack of resources, lack of knowledge, lack of peer support or, more troubling but equally prevalent, racist beliefs. This must change. One of the avenues for change is community policing, as discussed in Chapter 5 of this report.

With more emphasis on rehabilitation by the criminal justice system, courts, police and corrections are taking steps to allow elements of restorative justice to be included in the 'system. These advancements are evident throughout Saskatchewan, through alternative measures, conditional sentencing, and community and conditional release programs.

For adults, Saskatchewan is the only province in Canada that has a comprehensive provincial alternatives program. According to Saskatchewan Justice (2003), there were 2,780 adult referrals in 2000-2001, with 85 per cent of these referrals made after charges were laid. With 2,930 youth referrals in 2000-2001, the rate of youth participation in alternative measures is the highest in Canada. (Marinelli, 2002)

Although the use of discretion and alternatives in Saskatchewan is significant, Saskatchewan's charge rate for both youth and adults is more than double the national rate. (Statistics Canada, 2004).

As was observed at the Commission's Roundtable on Restorative Justice, there needs to be greater education for police, prosecutors and the public about the benefits of restorative justice, benefits that flow to both the individual and the community:

> **In terms of the issues we saw it as lack of acceptance, or this perception by many that this wasn't real justice, that it wasn't punitive and that, therefore, anybody that participated was kind of "getting off easy." So an issue around education, certainly with police and with prosecutors but also probably with the larger, the general public so they have a better understanding of what we're trying to accomplish.** (Speaker, Restorative Justice Roundtable)

> **I think just becoming accustomed to – like, people thinking justice equals punishment and that's not, you know, that's one issue that we have to face, where we feel that restorative justice isn't going to punish the people, it isn't going to lock them up, that's not what real justice is, redefining justice.** (Speaker, Restorative Justice Roundtable)

The police and Crown prosecutors need to embrace the principles of restorative justice, but will only be able to implement restorative justice in a broad way if they have the necessary options and resources available.

There are many examples of restorative justice projects at the community level that provide alternatives to the criminal justice system. The Regina Alternate Measures Program (RAMP) is a well-known example. It is operating in Saskatchewan to provide an alternative to police, victims and offenders. RAMP attributes its success, in part, to the fact that it provides culturally relevant and appropriate services. Therefore it has legitimacy with First Nations and Metis offenders.

> **RAMP adopts the philosophy of crime advocated by a restorative justice model. According to many of those interviewed for this paper, it delivers some exceptional and necessary interventions that enhance the justice system's ability to address crime. Its impact on the delivery of justice would be strengthened if RAMP were fully resourced to include more restorative elements where programming would take a holistic approach to offenders.** (Speaker, Regina Alternative Measures Program presentation)

For more information on the Regina Alternative Measures Program contact:
RAMP
2-2815 Dewdney Ave.
Regina, SK S4R 0X8
Phone: (306) 352-5415
Fax: (306) 565-2445

The Commission is aware that much has been accomplished in the direction of alternative measures, and that Saskatchewan is leading the nation in referrals. This must continue and be strengthened with more resources for supporting communities to resolve these issues.

Step 2: The Courts: Striking a Balance

The Commission met with all three levels of court in Saskatchewan, the Court of Appeal, the Court of Queen's Bench and the Provincial Court. These courts are the final authority on all justice issues, following a traditional model of the criminal justice system. Although the Commission promotes a broad definition of justice, the courts still have the responsibility of protecting the public when restorative justice has failed or has been deemed not appropriate. The integrity of the court system must be preserved for those who maintain their innocence, so they can have a fair trial. A court must also be able to impose penalties to separate offenders for public protection. Society has come to expect this dual role of the courts and the Commission has no intention of impairing the courts' ability to do this.

However, with the exception of accused people who maintain their innocence, there are a variety of filters that should be used to stop issues from coming to court. Some of these filters have been discussed in this report under Step 1. Some were discussed in the interim report of the Commission, November 30, 2003, under Restorative Justice: Creating Opportunity in the Courts.

The Hon. Bob Mitchell, then Saskatchewan Justice Minister, had this to say in his submission to the Royal Commission on Aboriginal Peoples in 1994:

> **In approaching a discussion of these issues, I recognize that at one pole of the current debate are proponents of a totally separate Aboriginal system of justice. At the other are proponents of a reformed but inclusive system. As in many conflicts of perspective, a middle ground may need to be found: one which promotes much-needed reform within the current justice system while giving Aboriginal communities the space to control and develop some separate institutions. Such an approach has the benefit of providing more opportunity for responsive justice and greater ability for innovation in justice delivery. Thus, Aboriginal justice may generate ideas for reform throughout the justice system.**

The Commission recognizes that the role for community extends through Step 2, and encourages community involvement in supervising probation and conditional sentences where possible, as well as in expanded use of circles, mediation and family conferencing.

Circles

As an example, circles have been a useful justice tool since the 1970s. Some circles have a more traditional flavour, while others follow a court-like practice. Although some people object to this as a misuse of a First Nations' tradition by a mainstream system, there have also been many expressions of satisfaction.

> **But the good thing that's been happening here, we had some sentencing circles, I think two ... Very, very successful, very powerful sentencing circles. As a result, the people have gone straight, they have not gone to jail. They've gone into recovery, they've got into getting themselves educated and getting themselves trained and they're doing jobs now, you know. That's how powerful these circles are.** (Speaker, Cote Community Dialogue)
>
> **Inside the forum, I think it's really beneficial. I'm thinking of the youth who don't have a parental support or they have dysfunctional families, but when they come into a circle or community justice forum I think it's really important for them to see the community support that's there for them. They may not be able to go home and have a safe, healthy place to go back to but they do start learning to make their own safe places by what they learn in the circle. And that's where I feel it's very important to have Elders in, Elders who come with their experience in life, and even their own spiritual wisdom. I think that's very important. It's also important for them to see some of the values and the faith that a lot of our Elders have, regardless of their racial background.**
>
> **I think that the process itself, where people are treated with respect, inside our circles we ask people to use respectful language and a respectful tone and speak in turn. And by doing that, that shows equality for everybody who's inside the circle, that we don't sit above each other inside there. I think that's very important. I think it just adds to the value of the person and helps them grow.** (Speaker, Regina Alternative Measures Program presentation)

Using traditional circles for sentencing and for community assisted parole hearings are examples of the transformation possible within the justice system. However, these circles must be respectful of First Nations and Metis culture and traditions, and respected by offenders, who may otherwise abuse the circle.

> **Today, working with our Elders, we're trying to reinstate these processes with the mediations, community justice forums, youth circles, healing circles, talking circles and sentencing circles. We heard the Elder this morning talking about sentencing circles and the negative effects it has if that individual's, person's heart is not in the right place; then**

> **they're going to abuse that system. But we have to put in the proper processes in there so that there's a need that that individual recognizes that they have to change their behaviour, and what effect it has on the people directly and indirectly, the victims, the community. So we ask you for those opportunities to bring those processes more into line with your processes.** (Speaker, Treaty Four Community Dialogue)

Two projects in Saskatoon are examples of the innovative use of circles. The Restorative Circles Initiative for youth and the Circle Court at the Provincial Court House aim to include needed service providers so that the exercise is fully restorative.

With this Commission's recommendations there is an opportunity to transform the criminal justice system. The potential for innovation has been demonstrated here and throughout Canada, as we said in our third interim report. Such innovation improves the system of justice delivery and increases the opportunity for restorative practices.

There must be a radical shift in thinking long before cases are brought to court. Instead of looking at the courts as the first step to resolve disputes, society, including the police, must think of the courts as the last resort. This is the challenge that Saskatchewan faces.

When a First Nations or Metis offender is brought to court for sentencing, the direction in the *Youth Criminal Justice Act* and the *Criminal Code* is clear. Courts must use imprisonment as a last resort. The *Criminal Code* specifically refers to Aboriginal adult offenders. As well, the *Youth Criminal Justice Act*, in similar language, refers to youth and says, "… all available sanctions, other than custody which are reasonable in the circumstances, for all young persons, with particular attention to the circumstances of Aboriginal young persons."

If the courts are to fulfill this legislated mandate, there must be opportunities to redirect an offender from custody. Her Honour Judge M. E. Turpel-Lafond of the Provincial Court of Saskatchewan addressed this situation, although her decision was overturned by the Court of Appeal:

> **In conclusion, the Court can only express its disappointment regarding how the sentencing process for M.(B.) began in the Youth Court. No alternatives were placed before the Court and the new legislation was apparently not considered in any serious fashion. Perhaps this is because counsel were all too aware of the lack of resources to follow the spirit and intent of this new legislation.**
>
> **There are no arrangements in place to support the Court in convening conferences, such as trained facilitators or**

> **community representatives (including Elders), and chambers days had to be utilized for this purpose. An alternative was identified and explored and this is reasonable and appropriate in the circumstances. The Court notes that with the current limitations on implementing the YCJA, this kind of approach will not be possible with youth that experience the kinds of challenges which M.(B.) has faced.**
>
> **Despite the image society might have of the judiciary, Judges can only implement legislation when community and institutional resources have been provided. When new legislation is put in place, such as the YCJA, the Court cannot address the root causes of offending, find rehabilitative sentences, and increase community safety without appropriate supports. Much could be said about what was not available here, and what is not available in the youth justice system in general in light of the YCJA.** (*R. v. M.(B.) [B.M.]*, [2003] SKPC 83)

It is hoped that governments will provide what is needed to follow the justice path described in this chapter.

The Commission heard there are lengthy delays in court procedure. Statistics from Saskatchewan Justice confirm this, particularly for the North. In many cases accused people are remanded in custody while awaiting court appearances. The Commission understands that some offenders ask to be held in custody for long periods. If found guilty, they hope to get a shorter sentence. The courts generally count time in remand as double time when it's applied against a sentence. This practice should not be encouraged. The court system must move more quickly. It does not promote confidence in the courts nor does it hold promise for restorative justice if the sentence is delayed for so long that the offender cannot remember what it is for.

What I say to the judges, it takes too long to sentence people. They're on remand for a couple months and it takes forever to get to court. (Youth, Paul Dojack Youth Centre)

> **The justice system works so slowly, that by the time the system reaches the kid, the kid has either done a whole bunch more offences or has cleaned up and can't relate to what they did six months or a year earlier. There's no connection between the judicial system and the offence because too much time passes between the offence and when it's dealt with ... so either it seems that there is no punishment for crimes, or they get healthy and then that charge comes up and they end up back in jail and are influenced by the people there. There's a few that are making it and ending up being returned to the justice system, were sucked right back down into what they were in several months earlier.** (Speaker, Restorative Justice Roundtable)

There is a very high volume of cases moving through the criminal justice system in Saskatchewan. Overall, the system has a significant degree of efficiency, but there are issues of inefficiency as well, and those issues of inefficiency it can have particular impact on Aboriginal people. These inefficiencies include delays to trial. Seventeen per cent of cases, the next available trial date is over six months. There can be delays in some communities to access Legal Aid lawyers for the first time. There is a relatively high use of remand in Saskatchewan, and there is an increasing number of appearances and adjournments. Twenty-one per cent of cases now have more than six appearances. (Presentation by Saskatchewn Justice and Corrections & Public Safety)

In addition, time in remand is wasted because there are few opportunities for education or activities that may have restorative results. The Commission believes that such opportunities should be available, although it realizes that participation would be voluntary.

It is hoped that when the recommendations in this chapter are in place, the courts' workload will be reduced. The result should be more efficient justice, without harming the safeguards provided by the courts. However, the Commission realizes that in the short-term there is a desperate need for opportunities for the courts to deliver appropriate decisions that also respect the values of First Nations and Metis people. All levels of government should encourage First Nations and Metis youth to become educated to help with the solutions to justice delivery in Saskatchewan. The Commission also realizes that all people who work within the courts can be influential in moving towards restorative justice. The shift to restorative justice principles should preoccupy the courts.

Recommendation 4.2
This Commission recommends the following immediate steps:

4.2.1 Funding be allocated by all levels of government to therapeutic resources with a First Nations and Metis focus, including: drug addiction, follow-up care, and healing initiatives.

4.2.2 That meaningful sentencing alternatives be developed by Saskatchewan Justice in cooperation with communities and Courts, to allow for intensive therapy involving Elders, healers, and supports for family, and that these sentencing alternatives have a First Nations and Metis focus.

Aboriginal Courtworkers

The Commission also believes that there is an important role for Aboriginal Courtworkers operating in partnership with the courts.

The Prince Albert Indian and Metis Friendship Centre originally provided Courtworker Services in Saskatchewan in 1969. The service expanded to other areas of the province and was contracted through the Saskatchewan Association of Friendship Centres. Provincial funding was terminated in 1987 and the program ceased. In 1992 the Linn report recommended the return of the program, and this moved the Federation of Saskatchewan Indian Nations, Metis Society (forerunner of Metis Nation - Saskatchewan), Saskatchewan Justice and Justice Canada to arrive at a funding agreement. Courtworkers returned to Saskatchewan courts in May 1995.

The mandate of the Aboriginal Courtworkers Program is to ensure Aboriginal youth and adults charged with an offence receive fair, just and culturally sensitive treatment.

It is clear that the services of the Aboriginal Courtworkers are in demand and play a valuable role:

> Courtworkers also provide different services. We actually track services. I tried to get an internet hook-up because I can actually show you how they report on line and it's a real-time reporting system. But they report services in the following areas: in court, on behalf of clients, so they'll speak to bail, speak to sentence, adjournments; they will also provide information that people do not understand the language. Many of the courtworkers actually speak their (clients') own language.
>
> Out of court, on behalf of clients. These services are provided: they contribute to sentence reports, bail reports, Legal Aid applications, legal service complaints.
>
> Services to other than the accused. They'll meet with family, relative or spouse. ... They'll liase with criminal justice systems: police, judge, Crown, defence, probation, other courtworkers, prison liaisons, complaints regarding Legal Aid services, any services, and complaints also about other courtworkers and other courtworker services around the country. We track what they actually do.
>
> They'll do counselling referrals and that's another service they provide, where they'll actually assist people with identifying educational opportunity, job finding opportunities, health, and medical or prison liaison services.
>
> Courtworkers are doing an increasing amount of work in the community, where they'll do community workshops, where they develop resources for their clients. (Speaker, Aboriginal Courtworker Program presentation)

Saskatchewan Justice completed a thorough evaluation of the Aboriginal Courtworker Program in 2000. The importance of this program is clearly stated in this review.

> The program is a critical component for the department in meeting the goals of the Aboriginal Justice Strategy (refer to Appendix A: The Saskatchewan Context). It helps balance the needs of the accused and the needs of the system through support of the offender. It helps ensure fairer treatment for and better understanding of the system by accused people. It helps address the root causes of Aboriginal crime and victimization by connecting the accused with community resources for treatment and

> **support. Through the use of a community-based model of service delivery, consideration can be given to specific community needs and situations. The community model also provides an opportunity for increased Aboriginal control over and input into justice services and decisions, and involves more Aboriginal people in delivering justice services for Aboriginal peoples. The program was an important first step in the implementation of the Aboriginal Justice Strategy.**

The Commission also heard about the benefits of broadening the role of a courtworker to help find housing, employment, financial assistance and other necessities that would be factors in sentencing.

Recommendation 4.3

This Commission recommends that the Aboriginal Courtworker Program be adequately resourced by the Government of Saskatchewan to meet their current mandate and consideration be given to an expanded mandate that will enable courtworkers to incorporate restorative support for those appearing before the Courts.

System Generated Charges

One thing that surprised the Commission is the high number of charges that come out of the court system itself. These arise from violating probation or not keeping a promise to the court or failing to appear in court at a time directed by authorities. The Commission agrees that it is important that the courts be shown respect. However, it is clear that charging everyone criminally for disobeying every court order is not promoting such respect. This must be reconsidered. The ultimate objective is to determine and address the root causes of individual offending behaviour and take steps to correct that behaviour.

First, the Commission believes that conditions should be put in place by the courts only when they serve a purpose. These conditions must be realistic and be based on the needs and the daily schedule of an individual. Conditions that require alcoholics to refrain from alcohol without detox support, or require people to stay away from the sex trade's "stroll" when they live in the area are bound to be broken. The Commission also heard about a youth who had to violate his conditions every day in order to attend school. He could not make it home by the 4 p.m. deadline.

Second, the Commission believes that there must be more supervision of people on bail. The Regina Auto Theft Strategy showed good results by putting youth and adults under strict supervision while on bail, according to a senior Justice Department official:

> **The enforcement has been based on when you get picked up for stealing your next car we discover that you're out after curfew, so you get charged with that. There hasn't been enforcement. What we've found, or one of the things we've learned with the Regina car theft project is a little supervision of those orders goes an awful long way. That money spent supervising is money well spent.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

Third, the Commission believes that court order violations must be dealt with in a different way, particularly for youth. *Tough on Kids*, a book written by two Saskatchewan Legal Aid lawyers with extensive experience representing youth, Ross Green and Kearney Healy (2003), suggests a fresh approach to offences coming out of the court system. (See also paper submitted to this Commission by Healy in Volume 2.)

> **Some may call breaches "repeat" offences, and some (perhaps wiser) may disagree. But if "repeat" has become the accepted parlance, this word may also have become a code-word that explains, to a large extent, the over-representation of Aboriginal and other marginalized children in custody. Our experience tells us that applying a jail-style response to breach charges will lead only to more marginalized youth, and to more victims. It may also lead to more cries for getting tough through incarcerating more young people.**
>
> **A key focus for us in this book has been how our system currently handles charges of breaching a Court order. The numbers of youth sent to custody for such "system-generated" offences is staggering, and a terrible waste. We wonder why many if not most breach charges could not be dealt with in a different way, either by diverting breach charges from the Court system, or simply by an administrative act without the necessity of laying a charge.** (Green and Healy, 2003)

Recommendation 4.4
This Commission recommends that system generated charges be dealt with administratively as follows:

4.4.1 Youth who are subject to system generated charges and lower level offences be referred to Elder led community based teams to discern and consider ways meet the needs of the youth outside of the Courts.

4.4.2 Adults who are subject to system generated charges and lower level offences be referred to community teams to discern and consider ways to meet the needs of the individual restoratively, outside of the Courts.

Examples of system generated offences are: failing to appear; *curfew violations;* breaches of probation.

Examples of minor assault offences are: strictly property offences, minor assault offences.

Victims

Restorative justice means a shift to including the victim. In the criminal justice system, many victims feel that their voices are not heard. However, many victims, especially victims of violence, may not be ready to take part in restorative justice. Understandably, they may require time and help before they can take part, as well as support during the process and afterwards. In cases where the level of discomfort is too high to meet offenders face to face, Rupert Ross (1992) in *Dancing with a Ghost: Exploring Indian Reality,* suggests the traditional option of two Elders. One would be for the offender and one for the victim, with Elders acting as go-betweens and private counsellors. When done well, restorative justice is said to provide greater satisfaction for victims.

Mediation

In this province, mediation is most often the alternative measure used. An evaluation of adult alternative measures in Saskatchewan for 1999-2000 and 2000-2001 found that both victims and offenders involved in mediation felt it was effective.

> **A pilot evaluation by Saskatchewan Justice of the perceptions of victims and offenders who had participated in mediation showed that participants generally found the process fair and helpful:**
>
> - **All offenders agreed that they had a better understanding of how their actions affected the victims; the majority said that they felt forgiven for what they had done and could make a fresh start.**
>
> - **The majority of the victims were satisfied with the way the agreement was reached. The majority believed the offender understood how they had been affected and that they had received what they needed from the mediation. All said that the mediation process was better than having the offender go to court.** (Saskatchewan Justice, April 2003)

I work with justice committees on the reserves out there and some of the reserves are set up well with the justice committees and so we'll talk with them, and they are the ones that do Alternative Measures and circles. And that's the way to see change in a person having to answer to their own community. (Speaker, Regina Town Hall Meeting)

An example of long-term success in mediation is Saskatoon Community Mediation Services, which celebrated its 20th anniversary in 2003. In its adult diversion program for 2002-2003, Saskatoon Community Mediation Services saw 869 accused people plus complainants and victims related to their cases. (Smith-McIntyre, H., 2004)

Family Group Conferencing

Family group conferencing can be used for youth and in some cases of domestic violence. Saskatchewan Justice statistics show little use by adults. This is because of "no-contact" orders, which prevent meetings.

> **Mediation, I think, is good as long as the whole family is involved in it, you know, the victim, the offender, plus the mediators that are there. I think it would eliminate a lot of people having criminal records.** (Speaker, Pelican Narrows Community Dialogue)

The Commission maintains that these services are seriously under funded.

As was recognized at the Commission Roundtable on Victims and Violence, victims and offenders often share similar circumstances, histories and challenges.

> **There's also a fine line between victim and offender, and a lot of cases people we see as offenders are really victims.** (Speaker, Victims and Violence Roundtable)

We also realize that services provided for victims must be provided in a shared way.

> **Well, that makes me think of, I've been thinking recently about how important working in an integrative, collaborative way is so important, and so many of us work in isolation. Like, even to do, like just conferencing about a client, it just seems to take forever to get the people involved, you know the circle of people involved with that person together.** (Speaker, Victims and Violence Roundtable)

Step 3: Corrections: A New Direction

Correctional centres, youth facilities and penitentiaries appear to be where society sends persons it wants to punish. In some cases offenders need to be separated from society to ensure the public's protection. However, the vast majority of these offenders are entitled to be released at a fixed date. Some elements of society believe in the philosophy of "lock them up and forget about them." The Commission knows this philosophy is unrealistic, unproductive, expensive and, in the long term, potentially unsafe for citizens. The opportunity for healing and restoration is needed for better results for the offender and for the long-term safety of society. Indeed the Commission believes that jails provide strong potential for true restorative justice. It is here that a motivated offender can appreciate the seriousness of his actions and chart a course to becoming a productive member of society.

> You know thirty years ago people used to go to prison, they wanted to smudge with sweetgrass, they couldn't do that. Now we have Aboriginal programming ever since 1982, which is really good, that's one of the successful things I see.
>
> I worked with the Elder, I worked with the inmates, you know, first-hand along with the staff ... So this is what I find, you know. Aboriginal programming, Sweats, ceremonies inside the institution is one successful thing I see. As a matter of fact, I seen that success here two weeks ago, I usually practise my culture quite a bit, I go to Sweats quite often. I went to a Sweat ... and here is this same person I had seen in prison, you know, from previous years. He is out now, he is leading a really positive life and he was at the sweat, and I thought, "Oh, my goodness, here is a success here." But the unfortunate thing about it is that Aboriginal people find their culture a bit too late. Not too late, I should say, maybe at a time when they should have learned it earlier. They find their culture and their language and their ceremonies within the institution, that's sad, but they come out and they start, and when they come out they live a positive life. (Speaker, Onion Lake Community Dialogue)

> And my research suggests that whether you think this form of traditional healing works or doesn't work, regardless of your standard or how you want to define that, the bottom line is that it seems as the individuals who become active in the traditional healing programs are also more active and more open to the other kinds of programs as well.
>
> So from a correctional point of view, an entirely self-serving observation would be that even if you don't believe traditional healing is worth anything, the bottom line is that if guys are involved in that, they have a better attitude towards everything else that's going on in the prison. They're less likely to get into trouble. They're much more respectful to the staff. They seem to participate more in the other kinds of programs. (Speaker, Research Roundtable)

Equally important is religious freedom for inmates. The Commission met with the Assembly of First Nations ministers and accepts their legitimate request to be allowed to visit imprisoned people and provide reintegration services.

> Well, when you have an inmate that's released on some kind of restoration program, there's a certain training element involved there, and it is relevant that the human rights

> **freedom of religion be respected of that particular individual in terms of his choice of the type of mentoring or teaching that he may be subjected to, that may involve his religious convictions.** (Speaker, Assembly of Christian Ministers presentation)

Awareness of the benefits of this approach has led to the creation of the Okimaw Ohci Healing Lodge, Willow Cree Healing Lodge and the Prince Albert Grand Council's Spiritual Healing Lodge. Healing lodges use a holistic philosophy in offering services and programs that reflect Aboriginal peoples' traditions, spirituality and beliefs.

However, despite these promising developments there remain concerns, which were raised at the federal level by the Correctional Investigator in his 2002-2003 report:

> **Based on our review of Correctional Service data and offender complaints, it is incontestable that the disproportionate barriers to safe, timely release of Aboriginal offenders constitute a continuing crisis and an embarrassment – even more so in the case of Aboriginal women.**
>
> **We have long advocated measures designed to bring a focus to these problems, to ensure an Aboriginal presence and perspective at the Senior Management table and cause an independent and informed review of the Service's policy and procedures as they relate to discriminatory barriers to timely reintegration.**
>
> **Stemming from the focus on addressing Aboriginal issues in the 2000 Speech from the Throne, the Correctional Service Executive Committee had indicated that specific measures needed to be taken to address the disadvantages of Aboriginal offenders. The Commissioner indicated at that time that the Service had "to ensure initiatives created lead to results."**

The concerns regarding the lack of resources to help First Nations and Metis people are reflected in the October 2002 special report of the Saskatchewan Ombudsman.

> **Despite Corrections' agreement with the effectiveness of Aboriginal programming and the need for more Aboriginal programming, and although significant steps have been taken, overall progress has been slow. More Aboriginal programs and more Aboriginal instructors are needed. This will inevitably require more program space, which is already falling short of needs. It will also require more instructors qualified to deliver Aboriginal programming from an Aboriginal perspective.**

One of the concerns raised in the Commission's Terms of Reference is the over-representation of First Nations and Metis people in prison. From the perspective of a restorative justice approach there must be a way to make sure that when First Nations and Metis prisoners are released, that they will not return to crime. The Commission believes that there is a need for culturally appropriate and Elder-led Aboriginal programming within all correctional facilities.

There are far too many First Nations and Metis men in jail across this country, but particularly in this province. The court system now recognizes this, as does society.

> **Courts have said such restorative justice must be more individualized, based on a realistic assessment of the offender from his point of view, as well as the future relationship with the victim and his community. Justice must protect the community from short-term and long-term harm. The offender must be encouraged to participate in a healing process, which involves victims and community. There also must be an infrastructure in place that can provide holistic approaches to healing, and at the same time will ensure protection to the public during the healing process.**
>
> **It is unrealistic to believe that First Nations people coming from extremely disadvantaged backgrounds can be rehabilitated once the cycle of crime has started – by successive and increased periods of incarceration. What is required in such cases is guidance, encouragement, training and supervision. It is essential that programs be put in place for First Nations people to break the cycle of incarceration, programs that the institutional healing lodge will provide. And the start is a facility to facilitate healing lodges within the grounds of an institution.** (Speaker, Dialogue with Inmates, Regina Correctional Centre)
>
> **That being said, we are aware that the preparation for the healing journey must begin within the institution as soon as possible, healing that will reach the roots of the individual, such as residential school abuse, sexual or emotional abuse, and violence both at home and in the community. This includes childhood abuse, physical, emotional and sexual, the curse of alcohol and drugs and other addictive behaviours, and the loss of culture throughout the generations because of assimilation and government policies.** (Speaker, Dialogue with Inmates, Regina Correctional Centre)

Community planning and support is an important part of successful reintegration. Once again, adequate resources and community partnerships are needed to make this a reality.

> **Some of our biggest issues are the lack of services for women after incarceration. We have women going to jail and coming out and they are thrown back out into the community with no services available, no one there to say, "Okay, you might have screwed up once but now we're going to help you wind your way back in." Maybe that would be through education, through employment programming, through just having somebody there when you're pressured, to say, "Okay, I'm there for you."** (Speaker, Central Urban Metis Federation Inc. presentation)

Research has conclusively demonstrated that imprisonment does nothing to deter other potential offenders from criminal behaviour.

Conclusion

The restorative justice model must not be limited to the criminal justice process. All people in Saskatchewan must recognize the value of restorative justice. There is a need for all Saskatchewan people to embrace the concept of justice with an emphasis on restoring justice, individuals, communities and the province of Saskatchewan.

> **And then in closing, I guess, I would go back to that we still, we will never be a part of you. [But] we're always, everything is interconnected. So what I would like to say is that we both work together to make this process a process that deals with all human beings equally, not just white or black or blue, but for everybody, and then an incorporation of our traditional processes that are meant for the good of everybody.** (Speaker, Treaty Four Community Dialogue)

Maximizing the use of restorative justice principles holds promise to benefit all Saskatchewan people and provide long-term solutions to the reliance on the expensive and less humane criminal justice system. The principles of restoring social harmony, taking responsibility for one's own actions, empathy and restitution for those who have been harmed is an approach that is respectful of all involved. These principles, which are compatible with First Nations and Metis traditions, and are inclusive of community, provide potential for meaningful outcomes for everyone as have been demonstrated throughout the province.

It is recognized that the road to a restorative justice model is not smooth. Criticism has and will be pointed at this approach, by people uninformed of its long-term benefits, as being soft on crime. This Commission believes that the only way to create a healthy, just, prosperous and safe Saskatchewan, working in harmony is through a comprehensive restorative justice model. Determined and sustained leadership and partnerships with communities are needed to bring this about. It will involve leadership from all levels of government. Moreover, true Champions for Change must also step forward and identify and support the vision. We are all capable of being Champions for Change, and we all have our part to do in returning justice to the community.

POLICING

POLICING

INTRODUCTION

The Commission on First Nations and Métis Peoples and Justice Reform was formed following the actions of two Saskatoon police officers who abandoned an Aboriginal man on the outskirts of the city on a bitterly cold January night in 2000. The circumstances were similar to the freezing deaths of other Aboriginal men in and around the city about the same time. Once the victim, Darrel Night, came forward with his complaint, a number of similar claims emerged concerning police conduct.

As a result of these actions, the Federation of Saskatchewan Indian Nations (FSIN) felt obliged to create its own special investigations unit. The unit looks at complaints against Saskatchewan's police forces and received more than 2,000 calls in the first two years of its work.

Coroners inquests were held into the deaths of Darcy Dean Ironchild, Lloyd Joseph Dustyhorn, Rodney Hank Naistus and Lawrence Kim Wegner. The Ironchild inquest, the first of these inquests, was held in December 2000. The jury in this inquest called for a committee to be established to oversee the carrying out of its recommendations. This committee was established in May 2001. The recommendations in the Dustyhorn, Naistus and Wegner inquests have been included in this committee's work. The committee monitors the progress of the recommendations and recently submitted a report to this Commission. The recommendations have not all been completely put into place; however, there is progress.

The deaths of Rodney Naistus and Lawrence Wegner and the Darrell Night case outraged the Aboriginal community. The FSIN described it this way: "This matter was so severe for our people that the establishment of a Commission was the only option we had to best describe the serious issues and determine solutions to alleviate our despair."

> **Many First Nations people, particularly those who are socially marginalized, have had to deal with clashes with police. Incidents are central in people's minds and none so critical as the recent incidents in Saskatoon involving outright racist actions by some members of the city police force. Although there have been inquests and analyses of the deaths of two men on the outskirts of Saskatoon in 2000, many First Nations people believe the truth has not come to light.** (Submission from FSIN)

Metis Family & Community Justice Services Inc. (MFCJS) notes that previous commissions and inquiries have examined policing in Saskatchewan with little success. It says Metis experience with policing has been mostly negative.

> Young Aboriginal men and women have been beaten, disappeared and died, while in police custody or after police contact. There have been far too many incidents and facts brought forward to continue to ignore this issue.
>
> The tragic deaths of Neil Stonechild, Rodney Naistus and Lawrence Wegner have raised grave concerns within the Aboriginal community yet they've largely gone unanswered. The tragic experience of Darrell Night and the successful conviction of Dan Hatchen and Ken Munson has brought this issue to the forefront. Aboriginal leadership has been successful in lobbying for the establishment of this Commission, to ensure that these young men's unfortunate deaths are not in vain. We mourn the loss of these young Aboriginal men, with their families. We pay honour and respect to the following:
>
> - Neil Stonechild
> - Rodney Naistus
> - Lawrence Wegner
> - Darcy Ironchild
> - Keldon MacMillan
> - Melvin Bigsky
> - Leanne Richardson
> - All other unidentified Aboriginal men and women who have passed on to the Creator.
>
> The deaths of these Aboriginal men and women are a burden that the Aboriginal community carries as a whole. These deaths are not faceless incidents but, rather, they were people with full lives as fathers, sons, brothers, and the women were mothers, daughters, sisters, that have left behind families that cared and mourn their death. (Submission from Metis Family & Community Justice Services Inc., 2004)

It was at this time of increased suspicion and mistrust of the Saskatoon Police Service and the RCMP that the FSIN and other Aboriginal groups began pressing the provincial government to hold an inquiry. The creation of the Commission on First Nations and Metis Peoples and Justice Reform was announced in November 2001. The province of Saskatchewan and the Federation of Saskatchewan Indian Nations established Terms of Reference that authorized the Commission to respond to justice-related issues of First Nations and Metis people. The Commission was asked to include in its examination all parts of the criminal justice system – policing, courts, prosecutions, alternative measures – and any other areas where it established inspection was needed. This Commission was directed not to investigate specific cases.

POLICING IN SASKATCHEWAN – AN INTRODUCTION

As Manitoba's Aboriginal Justice Inquiry noted in its 1991 report, much of the suspicion and hostility that exists between police and Aboriginal people is rooted in history. The troubled relationship between First Nations and Metis people and the Royal Canadian Mounted Police grew out of oppressive policies of the federal government – policies that it was the duty of the RCMP and its forerunner, the North West Mounted Police, to enforce. For Metis people, the role of the mounted police in the Northwest Rebellion of 1885 created animosity that has simmered for more than a century.

As First Nations and Metis people began a move to the urban centres of Saskatchewan in the second half of the twentieth century, they carried with them memories of harsh treatment at the hands of police agencies. Those perceptions lingered and have had a negative impact on the relationship between First Nations and Metis people and municipal police services.

The Commission heard many wise words from Elders on the subject of policing and its history. One Elder referred to the Treaty signing by his people in 1876 and the negotiations that took place. Speaking in Cree, he explained that "the Red Coats at that time were to be a servant of the people, not the dominator like we have been accustomed to all these years. The Red Coats were here in our community, our reservations, with the thought and belief from our people that they were there to protect us and to serve us and not to work against us."

A speaker at the Meadow Lake community dialogue also spoke of the history and how the promises made at the time the Treaties were signed have not been honoured.

> **The government, or the Queen, had, they told these Indian people, we'll give you people to look after you. We'll give you people to protect you, to look after your better interests, you know. And to me, it's translated into the RCMP, Royal Canadian Mounted Police, that's the people that the government gave us to protect us. But it's turned around, it's really turned around now, they're abusing us instead of protecting us now.**

For communities to be safe, Saskatchewan people, rural and urban, First Nations and Metis and non-Aboriginal, must develop close working relationships with police agencies to ensure that common goals are realized. It is not for the Commission or any government department or agency to determine the ideal policing arrangement or strategy. It is the responsibility of each community to determine what works best for it.

There currently exists in Saskatchewan, an atmosphere of distrust and fear that cannot be ignored. First Nations and Metis people in particular are fearful of police. Mothers of Aboriginal youth have spoken about the apprehension they feel when their children leave the home at night. Their fears involve the possibility of police abusing their children. The Commission has heard accounts of very young children hiding at the sight of a passing police vehicle.

> **The youth see the RCMP as bad people. They see their truck, they want to get away from them. I think the RCMP should be working with the youth, going into the schools, talking to them. They're scared, you know, it's in their mind. They're raised like that, they are bad people. I know children, violent children are scared of the RCMP. They see that vehicle, they want to turn around and run because of bad things that have happened.** (Speaker, Black Lake Community Dialogue)

In the Saskatchewan of tomorrow, the Commission believes police leadership must set an agenda that rejects the notion of a police subculture that condones mistreatment of any segment of society. Dignity and respect must be the custom and practice of police officers in their dealings with First Nations and Metis people. Anything less than this should not be tolerated. The measure of success, and the ultimate objective in this area, will be a Saskatchewan in which "my grandchildren are not afraid of the police," as stated by a Metis grandmother.

RACISM IN POLICING

The Commission began its work with the belief that racism is a factor in the delivery of a justice system that generally begins with police contact. While First Nations and Metis people have experienced difficulty with a system that is often foreign and oppressive, determining what role racism plays is difficult. Without direct evidence of racist actions, whether through the use of inappropriate language or behaviour, it is difficult to determine with any accuracy how significant racist attitudes are. There is no doubt that racism does exist. However, the Commission has also heard that most police officers perform their duties with fairness and professionalism regardless of the race of the person they are dealing with. Nevertheless, the Commission has concluded that racism in police services does exist and is a major contributor to the environment of mistrust and misunderstanding that exists in Saskatchewan. (The issue of racism is also addressed in Chapter 7 of this report.)

> **There is racism in the RCMP ... we've had problems in our marriage. I have phoned the police ... guess what? It takes them an hour to show up and we're only five minutes drive from the office. Not even. I could walk there in three minutes, I think. Anyhow, he has a problem, he phones the police. Guess what? Boom, they're right here. He puts the phone down, I go downstairs, they're at the door. That just goes to show you the difference between a Native person and a non-Native, how they respond. And it's true, because it happened to me.** (Speaker, Pelican Narrows Community Dialogue)

In a study of racism and policing, the Canadian Race Relations Foundation (CRRF) said that: "One racist act by a police officer is one too many." This attempts to explain the uproar caused by racist accusations against police officers. It also exposes the reality that racism does exist within police organizations across Canada.

The Metis Family & Community Justice Services Inc. submission to the Commission indicating charges of racism are real and need to be confirmed. It says the deaths of First Nations and Metis men involved in the justice system is evidence of racism.

There are many reasons why racism exists in police forces today and to ignore this issue would be an injustice to all community members who have shared their stories of racism and policing. The Canadian Race Relations Foundation has identified six areas that may cause racism in police forces:

- **The strong police identity gives police officers a feeling of power; they are protective of one another and many sometimes abuse their power.**
- **Training to prepare police for work in a society with a large immigrant population remains inadequate.**
- **The real or perceived existence of a very wide social, economic and cultural gap between the origins and lifestyles of police men and women and the multi-ethnic neighbourhoods they patrol.**
- **The lack of effective mechanisms for identifying racist incidents, attitudes, and behaviours in institutions.**
- **The lack of appropriate corrective and disciplinary measures for abuses of a racist nature.**
- **Condescending treatment of complaints from racialized groups alleging racism.**

Racism is difficult to see and even more evasive when found in society's institutions. Systemic discrimination happens "when a specific act, policy or structural factor – intended or unintended – results in adverse effects from members of a certain group." Systemic discrimination is deeply rooted within the criminal justice system and though unintentionally built into the system, nothing is being done to reverse its adverse effects. The criminal justice system and the police, as its imposer are foreign and one that Aboriginal people cannot relate to. Therefore, they are distrustful of the system and do not view themselves as receiving equal access to justice, at the hands of the police. A relationship that is based on mistrust fosters a system of adversarialism and ignorance.

> **What has become apparent in the exploration of racism in policing is that ignorance plays a huge role in it. Not understanding people with whom you come into frequent contact with can be very detrimental. Stereotyping or preconceived notions further inflame ignorance which can lead to acting out based on that ignorance or lack of respect for members of a certain race, religion or sex.**

The Saskatoon Police Service has taken several steps to eliminate racism within its ranks. In 1996, it appointed its first Aboriginal liaison officer, which has proven to be useful in building bridges with the First Nations and Metis community. The liaison officer's duties have expanded to include a leadership role in the Peacekeeper's Program, which has brought police officers into contact with Aboriginal youth in a positive setting. The Police Service has also started cultural training programs with the goal of "enhancing our ability to provide inclusive policing services by involving and reflecting our community multicultural mosaic," it told the Commission.

Chief Russell Sabo told the Commission that eliminating racism is an important goal of the Saskatoon Police Service and progress in this difficult area is being achieved:

> **We recognize that all of us, every one of us in this room, I don't care who you are, you're a racist. Everybody has that little segment. You just don't realize it until it hits you in the face. And what we have to do is, we have to understand where we have those feelings and overcome them and provide the training. We have a significant amount of effort, through the Provincial Police College, through our internal training processes, to give people the understanding of where they have some racist feelings and how to break down the stereotypes. We're working to that end. In addition to that we've taken our internal affairs area and expanded it to be a professional standards area. We are looking at best practices across the country to find ways of addressing those issues that come up and trying to break down some of the barriers, give people opportunities and move people around in the organization to different areas, give them opportunities. Of course like anything else, we have to work around collective agreements and our own staffing issues.**

The Commission recognizes that the collective agreements can be used to eliminate racism and if the terms of these agreements are introduced in good faith, the partners in these agreements will be "Champions for Change."

Despite its obvious importance in this Commission's discussions, and the fact that racism is a major obstacle to healthy relations between the First Nations and Metis community and police organizations, the Commission finds it difficult to name specific examples or to assign responsibility. Evidence of such activity, obvious as it seems from some perspectives, is just too difficult to verify. This Commission accepts that racism is a reality and supports the position of the Departments of Justice and Corrections and Public Safety in their presentation to the Commission. The Departments stated:

> **It must be stated that racist or abusive behaviour is never acceptable and is particularly inappropriate from officials in the justice system.**

The Commission suggests that taking a proactive approach to eliminate racism is the best approach and that prevention can best be achieved through education.

Saskatchewan Police Elimination of Racism Strategy

The Commission believes racism is the underlying factor in the atmosphere of mistrust and conflict that exists between First Nations and Metis communities and police services. A broad strategy to address racism is needed. The strategy must include an examination of recruiting, hiring and training procedures. There must also be an effective monitoring and enforcement policy, which would include termination for racist acts. This program should be developed by police services, police associations, the Saskatchewan Police Commission, the Federation of Saskatchewan Indian Nations, the Metis Nation – Saskatchewan, Saskatchewan Justice and the RCMP.

Recommendation 5.1

This Commission recommends the implementation of a strategy to eliminate racism in policing by the Saskatchewan Police Commission. This strategy shall contain:

5.1.1 **Police recruitment screening strategies specifically to prevent candidates with racist views on ethnic or religious groups from being offered employment.**

5.1.2 **A complaints process that requires allegations of racist language or behaviour against individual officers to be reported to the officers' immediate supervisor and the chief of police.**

5.1.3 **An intensive remedial training program for police officers who exhibit racist attitudes. This program must be successfully completed to the satisfaction of the officer's supervising officer and the program facilitator.**

5.1.4 **The tools which would allow the immediate supervisor or chiefs of police to respond immediately to allegations of racism.**

5.1.5 A proactive First Nation and Metis candidate recruitment strategy.

5.1.6 Employment assistance counselling for First Nations and Metis candidates that will assist them with the pressures of working within a police service that has traditionally been dominated by non-Aborignal people.

CULTURAL AWARENESS TRAINING

Previous commissions have approved the use of cross-cultural training programs, as have other studies and coroners' juries. This Commission agrees with these recommendations but questions the effectiveness of existing cultural awareness programs.

Participants in these programs doubt their value because they provide only minimal information in a short time. Other factors, such as participants' attitudes and the facilitator's skill influence their success.

The RCMP Training Depot and the Saskatchewan Police College provide cultural awareness instruction in their courses for police recruits. These courses appear to be in need of improvement. Police officers continue to be assigned to First Nations and Metis communities with minimal knowledge of the culture and history of the people they serve.

> **Although the training regimens at police colleges have incorporated First Nations education, to a small degree, the amount of time spent on this subject needs to increase. Training of all police officers should incorporate the idea that police officers can help be a part of the solution, be part of the healing process within communities, rather than part of the problem. Most of the police's clients are First Nations people, therefore, most of the training should be in relation to understanding First Nations worldviews and cultures.** (FSIN Submission)

The submission from the Metis Family & Community Justice Services Inc. suggests cultural awareness training programs should be updated and broadened:

> **Many commissions and inquiries before have recommended cross-cultural training and employment equity as possible solutions to these problems. However, such endeavours have not been very successful in the past, as decades later, we are still facing the same issues. We recommend that the Metis Nation – Saskatchewan and appropriate affiliates develop a cross-cultural training package. Current cross-cultural training is out of date, First Nations focused and is not taken seriously by the recipients.**

> **Development of a new program is needed that focuses on Metis experience and realities. Training must be more than just participating in cultural ceremonies. It needs to be updated to include: Metis identity, worldviews, values, beliefs, social structures, history and culture. It must be more than a one-day training, and should be flexible and adaptable based on the police organization's needs. Also, such programming should be offered on a continuous basis to new recruits, existing members and police management.**

Requiring police recruits to take part in a cultural awareness program that consists of fewer than 20 hours of instruction may be a good start but falls far short of what is needed, particularly for police officers who will work in communities with a very high number of First Nations and Metis people.

> **Take the members from the detachment, new members who come out of training, they get a cultural awareness program, but it's based on Cree, Sioux, Saulteaux and medicine wheels and teachings. They don't know what the Dene nation is like ... We Indian people, we come out and say, let's have a cross-cultural exchange then, so you can be more sensitive to our cultures and our traditions. So we do that, we have everyone closed in a room for a couple of days and teach them what it means to be an Indian, right.** (Speaker, Meadow Lake Community Dialogue)

Recommendation 5.2

This Commission recommends that all police services invite members of the First Nations and Metis communities to evaluate the effectiveness of existing cultural awareness programs and implement changes as required.

EMPLOYMENT EQUITY

As with cultural awareness training, employment equity on police forces is needed. However, it must be realized that simply having the police service reflect local race demographics does not lessen certain problems. There still can be confrontation between Metis and First Nations citizens and the police. Indeed, this Commission has learned of many situations where relations between Aboriginal citizens and the police have been strained despite and perhaps even due to the presence of Aboriginal officers. The Commission believes "police culture" has more to do with poor relations, which can override the benefits of employment equity.

As Frank Schmalleger and others say in *Canadian Criminal Justice Today: An Introductory Text for the Twenty-First Century*, policing has been identified as a subculture. It is often referred to as "The Blue Brotherhood" or the "The Blue Wall." In Canada, the police subculture is defined as a particular set of values and beliefs and acceptable forms of behaviour. The police profession attempts to implant new recruits with it. Socialization within the police profession begins with training and is ongoing.

Schmalleger also found that certain groups, including First Nations and Metis people, remain suspicious of police regardless of community policing. No matter how inclusive community policing programs become, it is doubtful that the gap between the police and the public will ever be entirely bridged. To combat this, they argue, a diverse police force made up of a variety of social, ethnic, racial and religious backgrounds should be created.

> **What kinds of new policeman are they sending into our community? We'd like to have more input. My community at one time said we'd like to have an all-Aboriginal police force in our community. They haven't been able to fulfil that. We have quite a few people from our community going to take that training in Regina. They're all over the province right now, working as police officers in different parts of the province. We wanted to have an Aboriginal person to be the corporal in our community. They pulled a fast one on us. They said they offered him a position in a different community prior to that position being vacant in Ile-a-la-Crosse. He has to stay two years in that other position prior to coming back to your community. That's what they told us.** (Speaker from Ile-a-la-Crosse, Beauval Community Dialogue)

It is the opinion of this Commission that there needs to be more First Nations and Metis representation on municipal police services and within the RCMP because police services should reflect the population. Saskatchewan Justice reports the following as of November 2002:

	Number of Aboriginal Police Officers	Total Number of Officers in the Police Services	Percentage of Aboriginal Police Officers
Regina Police Service	30	337	8.9
Saskatoon Police Service	30*	378	7.9
Prince Albert Police Service	17	71	23.9
RCMP	155	998	15.5

Source: Police Services

* The number of Aboriginal police officers in the Saskatoon Police Service includes two Special Constables.

Employment equity policy has resulted in an encouraging increase in the number of First Nations and Metis police officers in recent years; however, the Commission supports the need to further increase the ratio of First Nations and Metis officers in Saskatchewan, particularly in urban areas with large First Nations and Metis populations. There were also calls for the hiring of more women to work as police officers. The ultimate goal is a police force that is representative of the population.

Metis Family & Community Justice Services Inc. regards employment equity as a goal that can be realized in the short-term.

> A high number of government, private and public organizations have enacted employment equity programs. The MN–S expects more institutions to attract greater Metis representation at all levels in police forces. An important requirement of programming should include intensive recruiting from the Metis community. Efforts need to be directed at recruiting Metis people according to the newly accepted definition of who is Metis by the Metis National Council and the Metis Nation – Saskatchewan. The Linn Report also recommended, "a minimum target would be the percentage of Aboriginal people in Saskatchewan; the optimum, a percentage of Aboriginal staff equal to the percentage of Aboriginal offenders served."
>
> A recommendation for improved policing involves policing pre-employment programs to be developed and designed to train Metis people in the area of policing. Such programming needs to be established by Gabriel Dumont Institute or Dumont Technical Institute in conjunction with a university or Saskatchewan Police College. Such a program may assist in preparing Metis individuals for successful completion of policing entrance exams. Development of such programming may increase the amount of Metis police officers in police services across the province.

Recommendation 5.3

5.3.1 This Commission recommends that urban police services have a First Nations and Metis staffing component that is equal in percentage to the respective populations.

5.3.2 This Commission recommends to the RCMP that Community Police Boards and Police Management Boards participate in the selection, posting and orientation of RCMP members to detachments that serve their community.

COMMUNITY POLICING

This Commission has heard a great deal of discussion about the subject of community policing in both urban and rural communities and in First Nations and Metis communities. Over the past two decades the subject has been widely discussed in all parts of Canada and various definitions and concepts for community policing have emerged.

In Saskatchewan, the RCMP defines community policing as a "partnership between the community and police in the delivery of policing services." Their service delivery model is based on the principles of community policing: knowing and working with communities, identifying common problems and concerns, resolving problems, effective and directed enforcement. The Commission accepts this definition as a reasonable approach to community policing. Other definitions have been presented and all reflect the hopes of individual communities and are valid for their circumstances.

The definition of Community Policing stated by Susan Trojanowicz in *The Theory of Community Policing* is:

> **...any method of policing that includes a police officer assigned to the same area, meeting and working with the residents and business people who live and work in the beat area. The citizens and police work together to identify the problems of the area and to collaborate in workable resolutions of the problems.**

Community policing is another thing that's positive, but the only problem sometimes is they got to be out there, they got to be in the community, they got to live where they are and they got to work with those people. (Speaker, Battleford Community Dialogue)

The success of community policing comes from the joint effort between the people in the community and the police working to solve neighbourhood problems. The main areas to consider when looking to see if community policing is effective are:

- Community input into defining the problems that need to be solved.
- Community involvement in the planning and putting into practice of solutions.
- Community feeling that needs have been met.

Often, individual police officers are able to bring their own style of community policing to their job by simply using their personal skills and interest in the community. The results can be positive.

> Going back to the late 1970s we had a member of the RCMP. I don't even remember his name, he was a tall fellow, that was the first RCMP person that I ever knew that used to come to hockey games, activities ... he came to the band hall, he would come and participate. This was a person who made this effort to be part of the community, to get to know the community, and the people respected him because I remember when he walked in, the band members were surprised, but they welcomed him, and we saw him in an entirely different light. We have community events. They live here but there's a difference between living and residing. (Speaker, Beardy's & Okemasis First Nation Community Dialogue)

In many communities, particularly in the North, there were concerns raised about the image being projected by some members of the RCMP. Residents feel the officers build barriers between themselves and the people they are supposed to serve and protect. Often, communities suspect, the style and degree of enforcement is driven by the need for officers to lay charges to satisfy their superiors.

> RCMP that are driven by statistics is not something that is user-friendly for Aboriginal people. The pressure is on the officers to keep up their stats. This forces the officers of the law to become creative in laying charges. Police relations with local people are often not pleasant and this has a lot to do with the attitude of the officers that are coming into the community. Officers coming into the community often come into the community and the first thing they do is build a chain link fence around their home. What kind of message does that send? They walk around in schools, offices, restaurants, [wearing] bullet-proof vests, with a pistol. What's the message? (Speaker, Beauval Community Dialogue)

This Commission supports the concept of community policing and endorses the efforts that have been made to improve the relationship between community – individuals, local government, community organizations, schools – and the various police services. It is clear to this Commission that true community policing has much to offer in reducing crime rates, police abuse, racism and imprisonment rates. It can also lead to healthier and safer communities.

Recommendation 5.4

This Commission recommends that the Government of Saskatchewan, in view of the fact that it invests in community policing initiatives, conduct province-wide surveys every two years to monitor the degree of public satisfaction regarding community policing within all communities.

Examples of community policing have been presented to the Commission. One such example is the McNab Park Youth Project in Saskatoon. This innovative program brings together a number of partners, such as police, service clubs, community associations, the business sector and educators, to put on various recreational and cultural events. Before the initiation of the McNab Park Youth Project, crime had been increasing dramatically. In this small neighbourhood, there were 270 reported crimes against persons and property in the period between September 2000 and September 2001. After two years of operation, what began as a community policing idea has developed into the McNab Park Community Centre. Approximately 60 crimes were reported in the year ending September 15, 2003. This is an overall reduction of 77.8 per cent over two years. (Lockwood, 2003)

Communities and police services support community involvement. The Commission believes that a continued effort towards community policing would help to provide greater understanding between the police and First Nations and Metis people.

Community policing has also been defined as involving the following:

- **Community involvement in decisions about policing** The community members who receive police services should help set policing priorities and influence the policies of police departments. The police should not just have a one-way relationship with their communities. They must develop regular ways of consulting with their communities and they should actually *listen* to what the communities say.

- **Decentralized management** Communities and neighbourhoods vary widely and policies that are good for one area may not work in another. In recognition of this diversity, a community policing program should assign responsibility and authority to the police at the community level. This means that officers must be trained to handle this responsibility and authority and must be held accountable for their work.

- **Problem orientation** Problem-oriented policing means that police are encouraged to work with the community to solve local problems rather than focus on enforcement. In addition to their traditional task of reacting to calls, the police work with the community to identify and resolve the problems behind the service calls. This proactive, preventive approach has great potential in some First Nations and Metis communities where social and economic problems lead to high levels of calls.

We have noted earlier that while the police have been trying to put community policing into practice for nearly two decades, very few police forces have changed their operations to incorporate these three elements. Even police agencies that have publicly committed themselves to community policing typically give the community only token involvement in determining policies and programs. They retain high levels of centralized control over

> **operations, and pay little attention to solving the problems that underlie crime and disorder in the community. This is particularly true in deployed forces such as the RCMP where significant policy decisions are made at divisional headquarters or in Ottawa. It is apparent that there is a need for 'community conversations' to determine community priorities and to help determine what can realistically be expected from a police service.** (Linden, Clairmont and Murphy, 2001)

In Saskatchewan, community policing was described as a relationship of trust between the community and the police. The police do have a responsibility as leaders to assist in solving problems that lead to criminal activity:

> **Community policing, yes, we should be there in the forefront and starting that, looking at the problems and putting prevention measures in place and working with the community to address those problems.** (Speaker, Saskatchewan Association of Chiefs of Police presentation)

One of many positive examples of community policing in Saskatchewan is the partnership between the Saskatoon Tribal Council and the Saskatoon Police Service and more than 15 other community, private and government organizations. The program, called Peacekeepers, uses First Nations cultural approaches and teachings. Using role models, respected Elders teach at-risk youth the consequences of crime. The objective is to help these youth choose to be healthy and productive members of their community. In the year 2000 this program had over 800 participants. This is but one example of a meaningful choice that can make a difference for First Nations and Metis youth and adults.

The community-police partnership role is not new. It is the foundation of community based policing. "Community policing," according to Chief Cal Johnston, Regina Police Service, "refers to a particular kind of relationship between police and community. This relationship is complex and plural, for there is no single community but rather a collective of diverse communities (with membership defined by such variables as location, gender, age, culture, race, language, sexual orientation, ethnicity, occupation, political orientation, education and socio-economic status). The dominant characteristics of the community-police relationships are: openness (communication and behavior), responsiveness, co-operation, trust, respect, partnership (mutual assistance and support), closeness (concern and consideration), understanding (knowledge and awareness) and commitment. These characteristics exist for and apply mutually to the police and the communities." (Johnston, 2003)

An important element of effective community policing has been the creation of police management boards and community police boards.

Police Management Boards & Community Police Boards

Background

The First Nations policing policy was created in 1991 to provide improved policing services in First Nations communities. The objective was to make police services professional, effective, culturally appropriate and accountable to the community. Both the federal and provincial governments supported Aboriginal policing initiatives.

In 1993, a basic agreement was made between the federal and provincial governments and the Federation of Saskatchewan Indian Nations. It provided the foundation to negotiate Community Tripartite Agreements with the RCMP.

In September 1996, the federal government stated that "the renewal of the First Nations policing policy was a key role for First Nations communities in choosing a police service which respects their culture and traditions and accommodates their desire for increased authority and greater control over matters affecting their communities."

In addition, in 1999 an arrangement referred to as the New North Agreement was adopted through a memorandum of understanding between the federal and provincial governments and the 35 northern municipalities in Saskatchewan with extensive community involvement. Under this arrangement, community police boards have been developed, with roles similar to that of the police management boards.

There are 30 Community Tripartite Agreements in place in Saskatchewan, including 45 of a total of 72 individual First Nations. All community tripartite agreements are required to have police management boards.

Importance of Community Police Boards and Police Management Boards in Community Policing

The development and evolution of police management boards and community police boards has been called vital to the continued development of community policing. These boards are important building blocks for communities wishing to take responsibility for the criminal activities and social disharmony in their communities. They are also a means for communities to have a say in developing the manner in which they are policed. This is an essential step in the process of returning justice to the communities.

Police management boards were created under the First Nations policing policy and are an important component of the Community Tripartite Agreements. They receive support in the form of honoraria for board members and Elders. The federal and provincial governments share the cost.

The ultimate goal of police management boards and community police boards is to put into place self-administered policing in First Nations and Metis communities throughout Saskatchewan. Here's how communities go about setting up locally controlled policing:

- Local control of policing in First Nations communities begins with a band council resolution, expressing a wish to enter a policing agreement with the federal government.
- This resolution is forwarded to the federal solicitor general and provincial Department of Justice for approval.
- If the resolution is approved, the RCMP tells the community the number of officers and support staff needed to provide police services.
- Funding for an Aboriginal Elder is included in policing agreements, in order to have culturally sensitive policing, and to help new officers adjust to their roles.
- Funding also provides office space and personal lodging for the officers.

The community police boards provide the same service but were created through an agreement with the province and New North. The boards are volunteer operated and Saskatchewan Justice and the RCMP provide a comprehensive training program and ongoing support to the community police boards.

It has been stated that these boards are more effective than an external complaints process as they can respond immediately, the members have knowledge of the community and the relationship between the parties involved is needed to promote police-community relations.

> **I think just being able to have the police people be part of our community has made a big world of difference for us.** (Speaker referring to Montreal Lake, Saskatchewan Police Commission presentation)

In promoting community policing, a desired and likely result will be lower levels of crime and improved quality of life. When communities take responsibility, relationships are developed with community members and everyone, including the police, becomes accountable.

First Nations and Metis communities should have an effective and appropriate role in directing their policing services. Therefore, police management boards and community police boards must represent the communities they serve. In addition to police management and accountability, these bodies should ensure police independence from inappropriate political influences.

Concerns were raised with the Commission with respect to the training and support needed to ensure that community based policing continues to develop. To ensure this objective is met, these boards require adequate training and support.

In addition, due to the proximity of many reserve and municipal communities in Saskatchewan, many on-reserve and off-reserve populations use the same police members and grapple with the same policing issues, but have two separate boards with different resources and training capacity.

The management of the RCMP's F Division (Saskatchewan) encourages the use of community discussion groups to bring together various groups within a community. These include Elders, youth, business people and teachers. They assist the detachment in understanding the needs of the community in relation to crime prevention and enforcement.

Recommendation 5.5

5.5.1 **This Commission recommends that Saskatchewan Justice and the Aboriginal Policing Directorate in the federal Solicitor General's office ensure that Community Police Boards and Police Management Boards receive adequate resourcing and training to ensure that community based policing is supported and successful in all communities.**

5.5.2 **This Commission recommends that Police Management Boards and Community Police Boards that share one police service be amalgamated and ensure equal representation.**

5.5.3 **This Commission recommends that police officers working in First Nations and Metis communities, including urban neighbourhoods with high First Nations and Metis populations, be required to meet regularly with Elders and other community leaders in order to learn more about the culture of the people they are working with.**

MORE DISCRETION

One of the important features in the *Youth Criminal Justice Act* is the need to consider alternative measures when dealing with youth. The legislation directs police officers to use discretion when dealing with youth, such as warnings, cautions and referrals to community agencies. The *Act* further instructs police to consider community referral for non-violent, first time offenders. The *Act* states:

> A police officer shall before starting judicial proceeding or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or, with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences.

The success of the *Youth Criminal Justice Act* in keeping young people out of custody depends to a large extent on how police exercise their discretion, according to the Canadian Training Institute's resource manual, *Youth Justice in Canada*. (Kappell & Reid-MacNiven, 2003)

Police have always exercised their discretion, what this *Act* does is legitimize referrals to community programs. There are indications that the use of police discretion and extrajudicial sanctions has increased. This means that more youthful offending is being handled in the community, outside the court system and through the use of discretion. Police must be aware of the programs in the community and be able to identify with community areas that require program development. While the ability to refer youth to community programs is legislated, the value of doing so raised concern. Public education on the value of such measures is needed.

In Nova Scotia, police must fill out a report to explain any failure to refer matters to restorative justice measures. This is a rational approach, given that police may have some difficulty deciding whether to lay a charge after an intense arrest. (Clairmont et al, 2002)

Recommendation 5.6
This Commission recommends that all police services be required to prepare reports to justify any decisions that do not divert matters extra-judicially.

ALCOHOL AND DRUGS

Alcohol and drugs were identified across Saskatchewan as a main contributing factor in initial contact with the police:

> **We have seen a large increase in alcohol and substance abuse, drugs, street prostitution, assaults, street gang activity and property related crimes. In many incidents the victimization occurs within the Aboriginal community itself. The police, when called upon to deal with these reported crimes have done so, and in far too many cases our involvement has resulted in criminal charges and incarceration within the Aboriginal community. This increasing involvement has caused frustration for the police and obviously, has created a very strained relationship between the Aboriginal community and the police services.** (Speaker, Prince Albert Police Service presentation)

> **The root of the problem in the justice system, [is] alcohol and drug abuse. Those abuses do happen in our communities. These are just some of the symptoms of the socioeconomic realities of the region. And we need to provide education to youth on what the damaging effects of alcohol and drugs are, that it's not just a person's own physical biology that is being damaged, it's families and communities as a whole that are being damaged. So we need to somehow convince government that this needs to be looked at as a holistic approach and not just one issue, the individual.** (Speaker, Beauval Community Dialogue)

Whether alcohol or drug abuse is a root cause or a symptom, the Commission recognizes that it is an urgent issue that must be dealt with more effectively. The Commission heard alarming stories of the use of the "drunk tank" by some police. Putting individuals into a cell to sober up or go through withdrawal is inappropriate, traumatic and even deadly. There must be a more effective response that includes health professionals. The Commission is recommending that emergency detoxification centres be built immediately in La Ronge, Prince Albert and Regina, and the immediate opening of the facility in Saskatoon. In addition to these facilities, long-term resources must be available for those who suffer from alcohol or drug addictions. The Commission applauds the building of a "brief detox" unit for adults at Larson House in Saskatoon. This unit will house four females and eight males for 12 to 24 hours. These patients will be offered referrals to the Larson House social detoxification setting, or to other services, when the need is shown.

In remote areas the Commission recommends that emergency detoxification facilities be incorporated into the local hospital as was done in the newly constructed hospital in La Loche.

Centres to help people to recover from addictions must be available. The nearness of such centres is particularly important in the North. Many people stressed the importance of detoxification programs being available immediately when people are eager to take part in such a program.

> **The biggest challenge that our young people are up against today is dealing with addictions and battling with addictions. And do we have the resources in this community? Not very much resources have we here.** (Speaker, Montreal Lake Community Dialogue)

Addictions are viewed as problems that people must deal with before other types of help can be effective.

> **If there's an addiction present, no program in the world is going to make a difference. And that's part of that readiness thing. We have never been able to affect someone who's been addicted, in spite of our best efforts over two or three years of consistent involvement. And the reason is, to me it's very clear, that young person has given up their education, their family home, their children, their boyfriend or girlfriend, any authority in their lives, all in pursuit of the drug, whatever that drug is. So I want to caution that I'm not fooled to think that I can create the program that's going to address the issue if the issue is addiction based. If it's addiction based we step out of those young people's lives because we know we're going to lose 100 per cent of the time ... our best program is to take young people on the road and travel around Saskatchewan. But you know, the moment we return, they drink that night and they're arrested the next**

> **day. Because all we did was we created a very fragile balloon around these young people, with good intentions, but if the primary issue is addiction we're never going to affect them in the long term.** (Speaker, Restorative Justice Roundtable)

The Commission finds it unacceptable that Saskatchewan does not have detoxification centres especially for youth who come in contact with the law while under the influence of alcohol.

Recommendation 5.7
This Commission recommends that the Government of Saskatchewan establish emergency detoxification facilities in cooperation with municipalities immediately in La Ronge, Prince Albert, Saskatoon, and Regina. In remote areas, the Commission recommends that these facilities are incorporated into the local hospital, or in these remote communities, provision be made for sobering up houses as an alternative to drunk tanks.

Recommendation 5.8
This Commission recommends that the Government of Saskatchewan, in cooperation with municipalities, establish detoxification facilities for youth in Saskatchewan.

FIRST NATIONS POLICING

The Federation of Saskatchewan Indian Nations has been considering the merits of a "First Nation Controlled Police Service" for more than a decade. In 1993 the Chiefs-in-Assembly passed a resolution that stated the FSIN Justice Commission's strategic thrust should be towards the development of a First Nation controlled police service. That was followed by a 1999 resolution which stated that the Chiefs-in-Assembly support the establishment of Independent Tribal Policing on-reserve and direct the FSIN Policing Directorate to negotiate for increased funding to expand the mandate to develop stand alone police services. In February 2003, the Chiefs-in-Assembly passed a resolution that gave the Justice Secretariat the mandate to begin exploration and development of a provincial model of a First Nation Police Service.

The FSIN reports that the development of province-wide tribal policing has been slower than anticipated. The FSIN believes this development must come from the community up through the Police Management Board to the leadership for ratification. It suggests the police management boards need to consult with their communities and recommends that coordinators at the tribal council level be sought to assist the police management boards with the development and delivery of a community consultation process. The FSIN says this will ensure community support when the actual developmental/transitional process is implemented.

EXCESSIVE FORCE AND ABUSE

The Commission has heard many accounts of abusive treatment of First Nations and Metis people at the hands of municipal police officers and members of the RCMP. In their discussions with their respective communities, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan have also learned of numerous allegations of abuse.

The Federation's Special Investigation Unit has received more than 2,000 calls and investigated several hundred complaints from individuals who have had contact with police officers and others in the justice system. Some of these complaints are about physical abuse, intimidation, neglect of duties and racist behaviour. This unit has also received allegations of sexual and physical assaults.

> **I got to think about this RCMP cruising around with yellow stripes going down their pant leg, sidearms, night stick. They're supposed to be good people. Supposed to be. In the fall of 2000, there was a social going on in Stony Rapids. One of my daughters was intoxicated. Two members grabbed her by each arm, one on each arm. She kind of resisted a little bit. They smashed her right into the frozen ground, head first, smashed her nose. She was picked up the next day, got a medical record that her nose is broke. They did an investigation. You know what they call it? Police technique. Police technique applied to her. If that's police technique, I'm afraid of them.** (Speaker, Black Lake Community Dialogue)

The FSIN stated that First Nations people believe that police harass them and use excessive force with them, and they resent the fact that police are most visible in the poverty-stricken areas of urban centres that are home to a large percentage of First Nations people.

> **Police, having high status in society, are granted flexibility with regards to societal norms of behaviour as they uphold Canadian laws. This leniency applies to even those officers who do not live a value-based life. Consequently, some of them cross the line to excessive force, an abuse of power which First Nations people perceive themselves to be the victim of, all too often.** (Federation of Saskatchewan Indian Nations Submission)

In its consultations with the Metis community, Metis Family & Community Justice Services Inc. heard many stories of community members "being beaten after being picked up, threatened and too much force used in their handling." It noted the following comments from Metis people in Saskatchewan's North.

- **Police assaulted a ten-year-old girl and broke her arm. The police were attempting to get access to her parents and she "got in the way."**

- **Elder removed from her bed and taken to jail in her nightgown, released and left to find her own way home.**

- **Poor conditions in RCMP holding cells. People in jail only allowed to shower once a week. People getting scabies while in custody.**

Metis Family & Community Justice Services Inc. suggests people in Aboriginal communities do not view police as a resource in the way that non-Aboriginal people do. Rather, they prefer no contact with the police even when the police are there to help.

This Commission has heard complaints of police abuse in the detention areas of police facilities. Greater use of video recording equipment would discourage such activity and help determine the facts in any alleged abuse complaint. Prisoners and police officers would also benefit from the presence of an Aboriginal liaison worker or volunteer who could assist in easing volatile situations that occur shortly after a person is taken into custody.

> **The RCMP doesn't treat us with respect and often looks down upon us until we sign a statement admitting to the charge we don't understand. It is common for us to be held at the station without parents being notified and subjected to scare tactics and threats of being locked up for a long time if we don't co-operate. Our rights are not explained to us and oftentimes innocent until proven guilty is just a pipe dream in our Native communities. If we are expected to respect the law, then it must be returned, the law must respect the youth and their needs. We are not born bad, we just learn how to behave from our leaders, our parents and our peers.** (Speaker, Beauval Community Dialogue)

Recommendation 5.9

5.9.1 **This Commission recommends the increased use of video recording equipment by RCMP and municipal police services.**

5.9.2 **This Commission recommends that an Aboriginal liaison worker or volunteer individual be available for First Nations and Metis people upon their arrival at a police station or detachment office.**

COMPLAINTS AGAINST POLICE

Individuals wishing to lodge complaints of mistreatment by police officers have several options available. They can file a complaint directly with the police service, contact the Saskatchewan Police Commission, the Commission for Public Complaints Against the RCMP or the Special Investigation Unit of the Federation of Saskatchewan Indian Nations.

It is abundantly clear that First Nations and Metis people have no faith in the traditional complaint mechanisms, if they are even aware of their existence. For example, the Commission for Public Complaints Against the RCMP has received virtually no complaints from First Nations or Metis people in Saskatchewan despite the enormous presence of the RCMP in their communities. Similarly, the Saskatchewan Police Commission receives few complaints from Aboriginal people. In the year ending March 31, 2003, the Saskatchewan police complaints investigator received 130 complaints involving the eleven municipal police services and two rural municipal police services in the province. The Saskatchewan Police Commission does not identify the ethnic background of the complainant.

Any assumption that the lack of complaints from First Nations and Metis people was due to a high level of satisfaction with the services being provided by Saskatchewan police organizations was destroyed with the creation of the Special Investigation Unit of the FSIN in 2000. This office received an immediate barrage of calls, mostly from First Nations people.

First Nations and Metis people have no confidence that investigations of police complaints are fair or effective. The submission by the Metis Family & Community Justice Services Inc. states that Metis people believe it is "criminal that police are investigating police." The practice of police investigating themselves leads to questions regarding the validity of the whole exercise. The Metis Family & Community Justice Services Inc. would like to see a special investigations unit devoted strictly to complaints from Metis people.

FSIN's Special Investigations Unit

In February 2000, soon after the deaths of Lawrence Wegner and Rodney Naistus and the Darrell Night incident, the Federation of Saskatchewan Indian Nations established a Helpline for calls from First Nations people who contended the police had mistreated them. This quickly developed into the Special Investigation Unit and the hiring of two investigators who worked out of an office at the Federation of Saskatchewan Indian Nations building in Saskatoon. The mandate of the unit was:

- To provide First Nations people who have been mistreated by law enforcement officers with a complainant-friendly alternative to mainstream complains offices.
- To ensure that complaints are investigated thoroughly and that complainants are informed accordingly.
- To provide complainants with protection from retaliation.

A key component of the unit's structure was First Nations staff with experience in police and justice matters. As well, the unit was committed to establishing working relationships with local communities that would enable the investigators to respect cultural sensitivities and languages. The investigators were also committed to developing positive working relationships with police agencies and other non-police organizations such as the Saskatchewan Human Rights Commission, Coroners Branch and the College of Physicians and Surgeons. In the first weeks of operation, the unit worked with the RCMP Task Force that Saskatchewan Justice had established to investigate the deaths of Rodney Naistus, Lawrence Wegner and other Aboriginal men in and around Saskatoon.

Three years after its creation, the Special Investigation Unit has been successful in several areas. Most important, it has earned the trust of First Nations people, something mainstream complaints bodies have been unable to accomplish. There is now a widespread spirit of co-operation and respect amongst unit investigators, senior police management and police officers. The success of the unit has prompted Metis and non-Aboriginal people to seek out its services.

Perhaps most important is that First Nations people feel they have some place to go when their vulnerability has been exploited and mainstream justice institutions offer little hope or encouragement. The unit has received more than 2,000 calls since April 2000. It opened and investigated 695 files, as of December 2003. Covering 310 complaints involving the RCMP, 265 concerning municipal police forces and 120 related to other agencies. Approximately 65 per cent of the complaints have been concluded, with the balance still under investigation by the unit or other complaint bodies.

The Commission commends the Federation of Saskatchewan Indian Nations for setting up this important agency. In the short term, the unit must receive the necessary funding to continue its vital work. In the longer term, a plan to combine the resources of existing complaints agencies and the methodology and spirit of the unit must be considered.

Recommendation 5.10

This Commission recommends that representatives of the Federation of Saskatchewan Indian Nations, Metis Nation – Saskatchewan, governments of Canada and Saskatchewan work together to develop an independent complaints investigation agency that will meet the needs of First Nations, Metis and non-Aboriginal people with the objective of having such an agency in place by April 1, 2005.

Recommendation 5.11

This Commission recommends that the Implementation Commissioner monitor and oversee the establishment of a complaints agency that will reflect and respect the spirit and intent of the existing Special Investigations Unit.

CONCLUSION

Many individuals, organizations and government leaders have said that this Commission was created in response to the actions of police officers in Saskatoon. The Commission acknowledges this fact. The Commission also acknowledges that in order to transform the justice system a new vision must be put into place in Saskatchewan, not singling out police, but including them. The focus of this vision must be on justice as a means of providing healing, compensation and understanding, instead of the traditional goals based on punishment and retribution. In this way, a focus on returning justice to the community will benefit all citizens of Saskatchewan, including First Nations and Metis people.

Police will need to re-evaluate their role within this new vision. Priority needs to be given, by police, to assisting individuals and communities to work together while ensuring that communities and individuals are safe. The Commission recognizes that this dual role can be very difficult at times for police, and it requires superior skills of judgment and dispute resolution. The Commission recognizes that police will continue to need to use force and detention as a tool; however, it must be emphasized that use of these tools must be as a last resort.

Police must be prepared to act as peacekeepers, educators and role models. They must continue to be willing to be involved in the community and be encouraged to attend schools and take an active part in the education of youth. Community policing must be the objective. The Commission finds it ironic that as we prepare this final report, the leadership of the City of Saskatoon appears to be turning away from community policing and reverting to a crime and punishment model. The Commission believes this to be the wrong direction. It firmly believes that such a move will not lead to healthy communities working together.

Police cannot accomplish this vision alone, although they have a vital role to play. However, in order for this vision to become a reality police need the support and encouragement of individuals, communities and all levels of government. Police need alternatives, which they do not have now.

When the Commission travelled the province it heard stories from children and adults who were afraid of the police. Children who would hide under the bed when the police drove by their house because they were afraid of them. This mistrust, and fear of police must change. Police and the authority which they have must be respected, not feared. Police need to show leadership and demonstrate that they have earned this respect. This can occur if police show respect in performing their duties. The Commission has seen and heard of many instances where police are helping communities by showing respect and gaining acceptance. This model of mutual respect must be copied throughout Saskatchewan. A realistic re-evaluation of police culture, which traditionally has seen police exclusively as law enforcers, or as simplistically as in the childhood game of good guys verses bad guys, must be conducted. Police leadership needs to address racism as a priority and be prepared to deal with it swiftly and decisively.

In addressing this culture of policing, the Commission recognizes that police leadership will also need to address the public perception of police. The public is overwhelmed with negative examples of police conduct.

Throughout this report, the Commission has stated its overarching vision of "returning justice to the community." This theme is essential to any discussion of policing and its relationship to the First Nations and Metis communities. No amount of legislation, watchdog agencies or well-intentioned programming is going to make a difference if it is not presented in an environment that brings about understanding and trust within the various communities. It has been stated that a police service is a reflection of its community, enforcing its legal and moral standards. One model, despite its success in a given community, may not fit in a neighbouring jurisdiction. Allowing local government to act as the agency in policing matters should be the objective and the strategy for truly "returning justice to the community."

6

JUSTICE INSTITUTIONS

JUSTICE INSTITUTIONS

INTRODUCTION

The goal of this Commission is to return justice to the community. It believes Saskatchewan is uniquely positioned to lead the country in bringing about a fundamental shift in how justice is viewed, both by those in the system and those affected by it. The Canadian justice system has often been viewed as essentially dealing with crime and punishment. It carries with it many negative associations. However, justice must be viewed as not only protection of society, but as an opportunity for creating positive societal foundations based on healing and harmony.

In this chapter we have focused on the courts and corrections for two reasons. First, in the community dialogues a number of concerns were raised regarding these areas. Second, these two institutions are well placed to support positive change in the lives of First Nations and Metis people with the use of compassionate and creative measures.

This chapter focuses on finding ways to improve the courts and corrections. If these institutions are to better respond to the needs of First Nations and Metis people in Saskatchewan they must incorporate their values.

It is important the Commission states that, however changed, the courts and corrections alone cannot achieve justice reform. A broad based and integrated effort is needed to deal with the underlying issues that lead people to criminal behaviour. Significant efforts and resources should be applied to preparing the community to take responsibility over its own justice issues. Although this report (and the interim reports) has drawn on the tradition and experience of First Nations and Metis communities, all people of Saskatchewan will benefit from the findings.

While the Commission recognizes the role of the court, it believes the courts and the criminal justice system ought to be seen as a last resort. As things currently are, the Commission approves of the use of the courts and corrections only after all other options have been found unsuitable. We stress that at every deciding point in the justice process a case should be assessed to determine if it could be shifted to community based justice.

> **We see the justice response as being, in a way, the last resort response to a lot of problems that build up, and people don't come into contact prior with the justice system, is more a symptom of a long path of problems. And so that causes us to think about the justice system with some limitations as to what we expect of it, because we don't, in the same sense I mentioned that we don't see social**

> **assistance as a solution to poverty, we don't think we see the justice system as a solution to the social conditions that lead people to come into contact with the justice system ...** (Speaker, Saskatchewan Social Services & Human Services Integration Forum presentation)

A Vision of the Ideal

We believe the role of justice institutions must be reconsidered so that they may provide what communities need. They must develop alternatives that are aimed at meeting the needs of individuals and their families. Governments must look to healing citizens rather than imposing prison sentences. The courts and corrections should aim to be more meaningful to First Nations and Metis persons.

In several First Nations and Metis communities there are community justice processes, including community justice committees. The courts themselves should work more closely with these community efforts. However, in communities where no such system is in place, the courts should have the resources available to be able to give appropriate sentences.

Background

The courts and corrections – along with the police – have historically been viewed as making up the "justice system." As we have seen in several recent justice reviews there are legitimate concerns being raised by First Nations and Metis people about the justice system. Those concerns are often directed at these institutions. The Commission has heard the following in our dialogues across Saskatchewan:

> **My main concern is the lack of trust Aboriginal people have in the justice system. Rebuilding the trust is my main concern, because there's a lot of our Native children, a lot of Native families, I should say, moving into the cities and it's overwhelming, some of the situations that our Native children are getting involved in.** (Speaker, Metis Nation – Saskatchewan Eastern Region Community Dialogue)

> **I believe in the justice reform. I strongly believe that. But when we talk reform, we have to have our input. We have to say it like it is. We heard about our people thrown in jails because some of them didn't even know there was Legal Aid available, because some of my people don't have the money to hire a lawyer, people that live in Third World conditions that exist today, people that don't know they've broken the law because they can't read or write, and they go up and plead guilty. These are concerns we have.** (Speaker, Treaty Four Community Dialogue)

> **And obviously the system is not working. My son's been in trouble for about a year and a half and it's been adjourned and adjourned over and over and over again. They're overloaded with cases. Why don't they give the simple cases to, like what (E...) mentioned, you know, back to the — to us, at least we could try and help them out in that way.** (Speaker, Pelican Narrows Community Dialogue)

> **And that's another thing that was really — it really hurt me just to see these prisoners, especially they were very young. They were getting punished the whole time and they looked at the courtroom and they looked at everybody as they were going out and their faces were sad. I can still see their faces when they were going out of the courtroom.** (Speaker, Cote First Nation Community Dialogue)

The Commission agrees with the many people who have said the justice system is foreign to the beliefs, traditions and hearts of First Nations and Metis people. The Commission also agrees that the system of courts and corrections was imposed upon First Nations and Metis people without their participation. We also agree that there are many legal issues to be settled regarding the Aboriginal and Treaty rights of First Nations and Metis people that deal with justice and self-government. As we heard repeatedly, doubt and mistrust is widely felt.

> **The current justice system is not trusted or respected by many First Nations people because First Nations have had no say in its creation, no say in the development of policies or laws. First Nations have had to endure attitudes of the practitioners and more than any other group of people we are disproportionately affected by the system.**
>
> **In terms of values, the use of the adversarial approach to resolving differences in the justice system creates winners and losers. This approach clashes with the concepts of First Nations' justice, which emphasizes the restoration of social harmony in the community. Social harmony requires the building and maintaining of strong family and community relationships.** (Speaker, FSIN Health and Social Development Secretariat presentation)

> **Why doesn't the Canadian criminal justice system work for Indian people? Because that's a system that was never created by Indian people. It was created for Canadian society without any consultation with the Aboriginal society.** (Speaker, Regina Friendship Centre Community Dialogue)

> **Today we have the white man's law imposed on us. Many of my people don't know that law. We have illiterate people in**

> **our communities that can't read or write, and we expect them to know provincial and federal law. We got a lot of work to do within our communities.** (Speaker, Treaty Four Community Dialogue)

Contributing to the lack of respect for the justice system is the alienation from the system felt by many First Nations and Metis people. Integrating First Nations and Metis values into court and corrections is an important step in dealing with this alienation. The Commission believes that such integration will result in enormous benefits for all.

> **First Nations cultures, while distinct from each other, share some common elements which are based on a philosophy or world view that is particular to First Nations. For example, children are the gifts of the Creator that are placed in the temporary care of the adults in the family, the extended family and the community to nurture. They also consider the individual as a whole, signified by a circle. The values of love, respect, honour, truth courage, humility and wisdom are included in that circle.**
>
> **The First Nations value system and cultural practices place far greater importance than mainstream society on collective goals, collective benefits and collective responsibilities. In terms of justice considerably more importance is placed on restoring relationships and community harmony than on punishment. The teachings of the Elders about Creator's law, Grandfather's law and natural law are used to educate, guide, heal, restore and prevent offences.** (Speaker, Federation of Saskatchewan Indian Nations Health and Social Development Secretariat presentation)

> **And a lot of times we convict people, we just send them away, we're not dealing with the root of the problem. And they come back to the community and it's the same cycle again.**
>
> **So our emphasis is on healing the wrongdoer, the victim, the community. Includes participation from both the victim and the community so that the wrongdoer is confronted by his wrongdoings. He hears and sees and feels the emotions of the victim, the community in regards to his actions, so that he's just not shipped away and he never has to deal with that.**
>
> **Like I said, we're trying to develop a process where it includes, it's inclusive of everybody, promotes reconciliation of the victims, restitution. Healing I think is the most important component of all of that. Healing the accused, healing the victim, and healing the community.**

> **Knowing that you have a safe community, that you can go home at night without anybody intruding, or without anybody coming in, or trying to threaten your family, or you as an individual.**
>
> **And the other thing within the traditional justice system that we have within our communities, our Elders use it a lot. Part of that is shame. It's in a positive way, in a constructive way, our Elders kind of use that. It plays an important role in the effectiveness of our First Nations approach, so that the accused, the wrongdoer remembers a lot of these things, so a lot of that guilt comes back to him when he hears a victim telling him some of the things that they went through, physical violence, or if it's B & E in regards to theft.** (Speaker, Prince Albert Grand Council Justice Commission presentation)

The historic fact is that First Nations and Metis people have not had a role in the development of the justice system, but nonetheless have had it imposed upon them. The Commission believes that the integration of First Nations and Metis values is needed to make the system work effectively.

While there is some movement in this direction, the inclusion of First Nations and Metis values is still at a very preliminary stage. It is important that the people of Saskatchewan, particularly those in courts and corrections, become fully committed to this goal. The shift will not be easy. No doubt every attempt to change things will be met with criticism and resistance. Change can only take place with the support of the governments of Canada, Saskatchewan, First Nations and Metis. Certainly, realizing the vision of safer communities is worthwhile. The consequences of inaction are clear:

> **Considering the population trends of First Nations communities, considering the size of the gap in life's chances, considering the current level of institutionalization, such as the high number of First Nations children in care and First Nations youth in the young offender population, the cost projection to sustain the current system is daunting. If you add to this list the growing complexity of needs such as developing a response to a large number of people disabled with brain injuries from trauma or substances related to FAS, and add the under-inclusiveness of children and adults, the price of the current system appears to be unsustainable.** (Speaker, Federation of Saskatchewan Indian Nations Health and Social Development Secretariat presentation)

THE CHALLENGE

For the purposes of this chapter, we are challenged to come up with suggestions for revising the roles of the courts and corrections so that all citizens of Saskatchewan, including First Nations and Metis people, might begin to trust them. Such a change is not possible unless we have mutual respect for our distinct values and cultural practices.

OPPORTUNITY FOR TRANSFORMATION

It was suggested to the Commission by some people that a solution might be a separate justice system for First Nations and Metis people. However, more often the Commission heard that Saskatchewan people, including many First Nations and Metis people, want to work together to improve the existing system.

What is needed is a focused effort by all residents to transform the current system to make it truly inclusive. The Commission believes it is possible to create a system that respects the language, culture and traditions of First Nations and Metis people. If change does not occur in the justice system, then implementation of a separate system is an option to pursue.

A) The Court Structure

Saskatchewan courts and the judiciary are independent of the government. Saskatchewan Justice provides only non-judicial administration and related services to the three levels of court in Saskatchewan through the court services branch.

The Provincial Court of Saskatchewan has limited authority. Administration and the appointment of judges are the exclusive responsibility of the provincial government. It may only hear matters related to statute law that are within its jurisdiction. It also has initial jurisdiction in criminal matters. The Provincial Court deals with the vast majority of criminal matters.

The Court of Queen's Bench is a court of original jurisdiction. The Court of Queen's Bench is a superior court, administered by the province but with federally appointed judges. Any matter may be heard in this court unless legislation specifically states that the matter must be heard in another court. Criminal matters can begin in Provincial Court and then be sent for trial in Queen's Bench.

The Court of Appeal is the highest level of court in the province. The Court of Appeal is provincially administered but presided over by federally appointed judges. Any matter from the lower court will eventually, if appealed, come before the Court of Appeal. Once the Court of Appeal delivers a ruling, the Court of Queen's Bench and the Provincial Court must follow it.

The Trial Process

All residents of Saskatchewan, as do all Canadian citizens, have the constitutional right to a fair trial within a reasonable time under section 11(b) of the *Charter of Rights and Freedoms*. Trials are conducted within procedural safeguards to ensure they are fair and do not compromise the rights of the accused.

Nothing in this report is meant to minimize the importance of trials. Indeed, the hearing of evidence and fact finding, which takes place during trials, is not realistic during the restorative justice procedures. This is why the offender must fully and voluntarily participate in the restorative justice process. Otherwise, it could be argued that restorative justice procedures infringe *Charter* rights.

Juries

Juries are an important part of the adversarial trial system and are used in criminal and civil trials. Each province has its own process of selecting juries. In Saskatchewan, the names of prospective jurors are selected at random from the province's computerized hospitalization records. As every resident of Saskatchewan has a hospitalization number, this makes it the least biased list of names available. Only the person's name and address are released from the records.

Several weeks prior to a trial, the sheriff's office in the judicial centre where the trial will be held creates a pool from which the jury will be chosen. Names are selected at random from within the judicial district where the trial is being held by Saskatchewan Health. Saskatchewan Health forwards the names and addresses to Saskatchewan Justice, and the Sheriff's Office mails out a summons to each prospective juror.

Relief from jury service must be made by submitting an Application for Relief from Jury Service to the sheriff at the judicial centre nearest to where the jury is to sit, within ten days of the opening of the court for which the person is summoned.

Those not eligible for jury duty include: police officers; employees of Saskatchewan Justice; reeves, councillors and mayors; judges, Justices of the Peace, coroners, lawyers (and individuals who have served in these professions in the past); people who are engaged in the administration of justice; members of a board of education, the conseils scolaires, a board of trustees of a school district; a member or officer of the Legislative Assembly; a member of the Privy Council, the Senate or the House of Commons; a spouse of any of the above persons; and persons who are legally confined in an institution or who are certified incompetent.

Jury selection takes place before the start of the trial. The names of all eligible persons are written on cards, which are placed in a box. The court clerk draws a card and that person is called forward. The lawyers for the prosecution and the defence have to decide whether they want this person. If either lawyer objects to a potential juror, the person is excused. If neither lawyer objects, the person is sworn as a juror. This continues until 12 jurors are chosen. Everyone else is excused.

This same procedure is used to select juries for any court business in the province, except for coroner's inquests. There are only six members of a coroner's jury. A recent change to section 12 of the *Coroners Regulations* makes it possible in certain circumstances to ensure that the jury be composed in whole or in part by persons of Aboriginal ancestry. It reads in part:

> **Juries**
>
> **12(1) Where, in the opinion of the chief coroner, the circumstances surrounding the death require the jury to be composed, wholly or in part, of persons of Aboriginal ancestry, the chief coroner may:**
>
> **(a) request from the person in charge of the register maintained pursuant to subsection 11(1) of *The Saskatchewan Medical Care Insurance Act* a list of names and addresses, in the number specified by the coroner, of persons who are:**
> **(i) registered Indians pursuant to the *Indian Act* (Canada); and**
> **(ii) members of an Indian band within the geographical area indicated in the request; or**
>
> **(b) request from the Indian band or bands in the geographical area specified by the coroner a list of names and addresses of band members in the number specified by the coroner selected from the band list by a method determined by the chief coroner.**

This provision has been used often throughout Saskatchewan when a coroner inquires into the death of a First Nations or Metis person. This system can be used in coroners' juries because they can only make recommendations, not findings of guilt or innocence or, in civil matters, findings of liability. Where similar provisions have been attempted for criminal trials, they have been struck down by the courts as being contrary to the *Charter of Rights and Freedoms*.

Despite the unbiased method of selecting juries, the Commission was told that First Nations and Metis people are not adequately represented on juries. In community dialogues and presentations there were suggestions that their low representation may be due in part to such things as lack of childcare and transportation to court or to a general feeling of alienation from the justice system.

Currently, the Saskatchewan jury system is under review. The Commission endorses the inclusion of First Nation and Metis perspectives in the review. The jury is an integral and complex part of the justice system requiring a careful balance between the rights of victims and the rights of the accused. The Commission believes that given the important role of juries in our justice system every effort must be made to ensure participation from First Nations and Metis peoples. This may include providing funds for childcare, arranging transportation, developing community awareness programs and amending the *Jury Act*.

Recommendation 6.1

This Commission recommends that the Government of Saskatchewan encourage and support the participation of potential First Nations and Metis jurors with the provision of resources for childcare and transportation where necessary.

Language in Court

The most basic obstacle to understanding and effectively participating in court proceedings (or any proceeding for that matter) is the use of language that cannot be understood by the parties involved. This is true if the vocabulary being used is too complex or unusual, and even more so if the proceedings are in a foreign language.

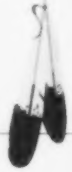
Section 14 of the *Charter of Rights and Freedoms* gives every Canadian citizen the right to an interpreter in a proceeding. In Saskatchewan, under the *Language Act*, residents have the right to court proceedings in either of Canada's two official languages. This legislation does not mention the use of other languages. However, it is the duty of the province and it is the policy of Saskatchewan Court Services to provide interpretation during a court proceeding in the language of any accused. This service is routinely provided in all areas of the province. There are, however, gaps in interpretation services and they are not always available in Saskatchewan judicial proceedings.

We need to break that language barrier. There's people out there that don't understand what you're talking about when you talk to them in English. They say okay, and then you ask them the question in Dene, and they'll just keep on talking. (Speaker, La Loche Community Dialogue)

In this regard, the Northern Cree Court is a significant innovation that began travelling to court circuit points in October 2001. The Cree court is based in Prince Albert and travels to Pelican Narrows, Sandy Bay, Montreal Lake and Big River First Nations. The court is presided over by His Honour Judge Gerald Morin, a Cree member of the Cumberland House First Nation. The court party includes a court clerk, Crown prosecutor and Legal Aid lawyer. The entire court party possesses the ability to speak and understand Cree and English. Judge Morin allows all participants to speak either English or Cree.

The Commission attended Cree court in Sandy Bay and was impressed by the balance Judge Morin achieved in demonstrating the seriousness of the proceedings while ensuring that participants fully understood what was going on. People who have said they are now better able to understand and participate in the court procedure have praised the Cree court as a success.

The Commission heard many endorsements of the Cree court and appreciates there is a need to copy this innovative project in other parts of the province. It has also been suggested that courts should be developed to use other First Nations languages.



> **What I've encountered, I think what's more intimidating than anything, is the language that's used within the court system. I, myself, have had the opportunity to go out to some of the communities and brief them in regards to what the process is within the court system. In our own language, in my Cree language – I come from Waterhen Lake First Nation, an original member from there – to speak with our First Nations people and explain the process so they understand. I tell you, you can see a big difference in their face when they realize what the whole process is, as opposed to going within the court system and being fearful of not knowing what the process is, or not understanding the language that the courts, the Crown prosecutors, the lawyers use.** (Speaker, Meadow Lake Community Dialogue)
>
> **A lot of the people like it because they can speak their first language when they go to Cree court.** (Speaker, Pelican Narrows Community Dialogue)

Recommendation 6.2
This Commission recommends that the Cree Court concept expand both geographically and linguistically so that a First Nations or Metis person may attend court proceedings conducted in their own language.

Recommendation 6.3
This Commission recommends that all levels of court in Saskatchewan inform First Nations and Metis people appearing in court that they have the right to receive translation services, so that they fully understand the proceedings.

Legal Family Matters

Concerns were often raised about the high cost of travel, in time and expense, faced by northerners involved in Family Court cases. Provincial Court circuit judges travel throughout the North but are restricted in the family matters they can deal with. They only can deal with family law matters that fall within provincial jurisdiction such as child protection matters, family maintenance matters and some enforcement of maintenance order matters.

The Court of Queen's Bench is willing to travel to other points, but only if court facilities are renovated to accommodate the needs of the Court. Privacy is the most important issue in family law cases and, in their current state, court facilities in Northern Saskatchewan are inadequate.

Legal Aid in family law cases raises important issues for First Nations and Metis people. One is its availability; the other is the clients' faith in it. In Family Court matters both parties cannot have representation from the same Legal Aid office. The Legal Aid Commission says it is a policy to only represent one of the spouses from a Legal Aid office. However, eligibility assessments will be conducted on both spouses before one is sent to a lawyer in another office.

An approach that has recently developed as a restorative solution in the family law area is collaborative law. This is a non-litigation approach to problem solving. The Collaborative Family Lawyers of Canada website describes collaborative law as a cooperative problem solving process involving spouses and collaborative lawyers. Informal discussions and conferences are used to settle all issues.

For more information:
www.collaborativelaw.ca

The goals of the collaborative process are to find and focus on common interests; understand each other's concerns; exchange information; explore a wide range of possible choices; and to reach solutions acceptable to both parties. It is especially effective in cases where the parties need to maintain a relationship for the benefit of the children. The parties and their lawyers take part in four-way settlement meetings. They work to establish agendas, set realistic deadlines for document exchanges, and create a safe, open, and fair environment for resolving conflict without litigation.

Collaborative law approaches might be a limited solution to the problems faced by people in Northern Saskatchewan without access to the Queen's Bench Court. It is possible that this method of conflict resolution could deal with all family law matters, other than child custody and actual divorces.

Recommendation 6.4
This Commission recommends that the Government of Saskatchewan gather representatives from the Court of Queen's Bench and the Provincial Court, together with at least one Metis and one First Nation northern representative along with representatives from the Government of Canada to explore ways to address a more satisfying and economically affordable solution to bringing family law matters to the North.

First Nations and Metis Participation in the Courts

The Commission heard that the Cree court is simply a Cree language court, and not a truly Cree court with a foundation in tribal law. There is some basis for this comment; however, it does not take into account either Judge Morin's background or his approach. Judge Morin's approach uses his experience, culture and traditions, along with his legal training and his experience sitting as a judge.

> **I know for me it's a dialogue that I try and maintain with some of the justice committees. When we go into different communities I meet with them. I meet with them in Pelican Narrows, Montreal Lake, I'm trying to do something in Big River, you know, to try and introduce that dialogue from that community that's out there, that's not in front of me in court. So it's important for me to make that extension of who we are in court.** (Judge Gerald Morin speaking at Stakeholders' Meeting)

This approach has legitimized community-based programming where the Cree court presides.

> **You know, the Cree court that's here now. I think it's a really positive step and I think we're going the right direction. And ever since we started Cree court, you know, from a professional point of view, my programming was increased. More people now start coming to my programs and, you know, I think they're starting to open up a bit. When I first started last year, before the Cree court last year, you know it was really hard to keep up with the programming because of the sparse number. Like sometimes I'd only have five people, sometimes I'd only have one, sometimes nobody would show up at all.**
>
> **But now, ever since Cree court started, there's always a consistent number of people that always come to that program and, you know, in a way I'm very happy with the success of that program. And it's because, you know, I think the Cree court has – you know, gives people a better understanding about law and their court issues.**
>
> **And I guess the other thing too is having an Aboriginal judge. When before they always seen a white judge, and they automatically think that's an oppressive, you know. Like, this person is always coming down here and telling us what to do, so, you know, we have to, you know, pretty much follow what he has to do even though we don't like it. But in a way, seeing an Aboriginal judge, they can – in some way they automatically have this idea that the judge does understand some of the situations that do happen on most communities.** (Speaker, Pelican Narrows Community Dialogue)

The Northern Cree Court Initiative included the following in its vision:

> **The Cree Court proposal is not a separate court system. It is essentially a creative enhancement to the current system with a restructuring of the Euro-Canadian approach to justice issues. The proposal focuses on three fundamental concepts: the appointment of an Aboriginal judge to preside over a reworked court established at a location in Northern Saskatchewan; consideration of the establishment of a Peacemaker's component integrated with the court and management of the administration of the court itself. While the approach to handling cases would be refitted to meet the needs of Aboriginal people, the Peacemaking component, emphasizing healing and community values, is what will set this court apart. But it requires a skillful Aboriginal judge to make the overall system work.** (Speaker, Saskatchewan Justice and Corrections & Public Safety presentation)

he Peacemaker element of the Cree court is an important innovation that onnects the court with community restorative justice procedures. In this model he court is not involved in the peacemaking process. Instead it allows the parties o mediate the matter outside court and will accept the terms of the resolution. rince Albert Grand Council mediation services often facilitates the process. This rocedure allows for mediation of more serious charges, such as assault with a eapon, which would normally be outside provincial justice guidelines for lternative measures.

n the Tsuu T'ina Nation model, if it is decided a dispute will be best handled hrough the peacemaking process by the Peacemaker Co-ordinator, a talking ircle rather than a trial ensues. The Peacemaker Co-ordinator assigns a ommunity Peacemaker who is then responsible for arranging a meeting where he victim, the offender and community members including Elders sit together to rrange undertakings for the offender to complete. Once such undertakings are omplete, the matter is returned to the Judge, where the Peacemaker Co-ordinator reports on the activities. The crown prosecutor then assesses what has been done and, if satisfied, the charge is withdrawn.

The House of Justice paper included in Volume II of this Report, describes the peacemaker role as a link between the community and the court structure. Part of the role of a peacemaker may be carried out through the office of the Justice of the Peace. The proposed Justices of the Peace:

> would generally be resident in their community, but integrated with the court structure in a close relationship. Within this framework there would be a variety of JP levels and functions, but a key role for some would be as Chair of their community's justice committee. This would ensure that local justice issues received appropriate attention from knowledgeable persons skilled in community dispute resolution. They would facilitate restorative initiatives, supervised diversion programs and develop appropriate local mechanisms for dialogue about community/court concerns.

hile the Cree court has demonstrated success in making court proceedings ore widely available, to reach its full potential the Peacemaker function should e expanded, community involvement should be encouraged and community rograms should be better funded. This Commission does not wish to dictate how ommunity involvement in the court system should occur; that should be for ach community to decide.

ecommendation 6.5

his Commission recommends that all courts be fully resourced by the overnments of Canada and Saskatchewan to include the critical omponent of community involvement.

Recommendation 6.6

This Commission recommends that the governments of Canada and Saskatchewan, to ensure equitable and fair representation in the courts, appoint First Nations and Metis persons to sit as judges at every level of court within Saskatchewan.

The Commission was informed that the number of Aboriginal judges, Crown prosecutors and Legal Aid lawyers is low and that efforts are being made to recruit more First Nations and Metis people into these occupations. The full integration of First Nations and Metis people in all levels of court is essential. Every level of government should continue to encourage and fund First Nations and Metis people to attend law school and to complete all bar admissions programs so that they may practice law in Saskatchewan.

Court in the Community

A measure of community involvement by the court system is the number of Provincial Court points in First Nations and Metis communities. When a community has expressed willingness and has demonstrated to Saskatchewan Court Services that it is practical to hold Provincial Court on a reserve the proposal is usually accepted.

The willingness of the Provincial Court to respond to a request from a community was demonstrated following the Commission's first Interim Report. In the report the wish of Onion Lake residents to have court held once again on their First Nation was noted. Chief Judge Seniuk acted immediately and Court will resume shortly on the Onion Lake First Nation reserve.

However, concerns were raised about the limited access of First Nations and Metis people to court, particularly in the North. Often, there are difficulties in arranging for travel to the nearest court point. As well, the limited amount of time the court is able to sit in smaller communities and the resulting rushed pace is a problem.

The Commission heard that holding court in a First Nations community is very important given the circumstances of many First Nations people.

> **We do have court on-reserve; I think it's just a big advantage because now we're starting to see more fairness and equity. We do have probation coming here, and that has been for quite a few years, which is a big advantage because, you know, let's be honest, 80 per cent of our people are unemployed and live on $195 a month, and how do we honestly expect them to go to P.A. or Saskatoon?** (Speaker, Beardy's and Okemasis Community Dialogue)

The Commission encourages all levels of court within Saskatchewan to sit at First Nations and Metis communities where it has been formally requested and is broadly supported. Of course, it is essential that appropriate facilities be provided on a financially feasible basis. Contributing to the successful experience of the Beardy's and Okemasis First Nation was the fact that all concerned parties cooperated to create a suitable facility.

The Commission recognizes the need for more court facilities must be dealt with and that many of the current court points have inadequate accommodation.

And just as one person related to me this morning, it's very much of a challenge for anybody, especially if you're a victim of rape, for example, and having the perpetrator right next to you. There's no space there, and you can really feel for the victim in that situation. (Speaker, Sandy Bay Community Dialogue)

> **This facility is extremely inadequate – and presents serious concerns regarding cleanliness; maintenance is poor and the regular noxious odour of natural gas causes serious health concerns. This can be a busy court point and court days can be long and difficult so that the inadequacies of the facility are exacerbated.** (Saskatchewan Court Facilities and Security Review Committee, 2001)

The Commission acknowledges that facilities must meet the standards set by Saskatchewan Court Services before a community can expect court to be held. It must also be recognized that it is not economically practical for the entire court party to travel to every First Nation and Metis community. The use of technology is permitted under the *Criminal Code*. Therefore, every level of government should work to provide video-audio linkages with the help of community justice committees and local police for first appearances, bail hearings, simple trials, appeals and other proceedings in places where court is simply unable to attend.

Recommendation 6.7

This Commission recommends that all levels of government encourage and promote Court points in First Nations and Metis communities where suitable facilities can be provided and maintained by these governments; in the alternative, these governments should begin to provide suitable video and audio links between inaccessible First Nations and Metis communities and the courts.

Expanding the Role of Courts to Include Restorative Justice

> **The purpose of a justice system in an Aboriginal society is to restore peace and equilibrium within the community, and to reconcile the accused with his or her own conscience and with the individual or family that has been wronged. This is a primary difference. It is a difference that significantly challenges the appropriateness of the present legal and justice system for Aboriginal people in the resolution of conflict, the reconciliation of offenders and victims, and the maintenance of community harmony and good order.** (Green, 1998)

The Commission believes that it is essential to recognize the differences between the worldviews of First Nations and Metis people and those of non-Aboriginal societies. First Nations and Metis values should be incorporated into the operation of the courts. These values include restoring relationships, accountability, community involvement and community ownership. From this perspective the courts' role is to bring peace and balance to the community. (See Chapter 4 - Restoring Justice.)

The 1996 *Criminal Code* amendments allow for the use of alternative measures and conditional sentencing. Sections 716 and 717 allow alternative measures proceedings outside of court and accordingly are referred to as extrajudicial. (See Appendix 8.) As discussed in the chapter on restorative justice, these measures create useful alternatives to court procedures because they allow situations to be dealt with before charges are laid.

Alternative measures currently apply primarily to police and prosecutors as they consider alternatives to filing criminal charges. However, as mentioned above, if the policies and programs of the Attorney General of Saskatchewan are expanded and focused on First Nations and Metis communities, these provisions will become useful alternatives to court proceedings, even when charges are filed and court proceedings have begun.

Pre-charge or post-charge alternative measures can provide for responses that are entirely community based. On the other hand, conditional sentences are employed post-charge. These provisions allow for court supervision of community solutions. Section 742 of the *Criminal Code* provides for the use of conditional sentences as follows:

> **742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court**
>
> **(a) imposes a sentence of imprisonment of less than two years, and**
>
> **(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2...**
>
> **the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.**

If the terms imposed by the courts in a conditional sentence are met, offenders are not imprisoned. Instead they serve their sentence in the community with conditions such as curfews and orders to refrain from alcohol. Such conditions often include attending spiritual healing ceremonies or alcohol treatment to assist in obtaining insight into the causes of the offending behaviour. If the terms of the conditional sentence are broken, the offender must return to court for a review. It could result in finishing the term in prison.

Community responses to criminal behaviour take various forms, depending on the charge, the offender and the needs of each community. The important thing is that, where possible, the matter is taken from the court system and returned to the community.

> **In terms of adult alternative measures more generally, Saskatchewan is the only jurisdiction in Canada with a comprehensive provincial alternative measures program. In 2000-2001 there were 2,770 adult referrals. The program is offered in 21 communities. There are 52 caseworkers and Aboriginal people accounted for 42 per cent of these cases. In terms of youth, we have programs operating in 14 communities. We have partnerships with five tribal councils, five Aboriginal agencies, four community agencies and three government offices. Services are provided in remote and rural northern communities through fee-for-service arrangements. Saskatchewan is diverting a large number of youth out of the courts and into alternative measures programs.**
>
> **These programs provide an opportunity for offending youth to acknowledge and repair harm to victims in communities outside the court system. In 2000-2001 there were 2,911 youth referred to these programs and Saskatchewan has the highest rate of youth participation in alternative measures in Canada. We have some evidence, of course, that these programs are working. More than 8 out of 10 youth and adults resulted in agreements, and 9 in 10 of these agreements are successfully fulfilled. And the availability of these programs in alternative measures has led to a decrease in the number of youth who are receiving other community sentences.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The Saskatchewan justice system must be applauded for its use of alternative measures; however, more can be done. Excluding certain offences from this option may bar important opportunities for healing and rehabilitation.

The *Criminal Code* states that the fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and maintenance of a just, peaceful and safe society by imposing just sanctions.

Section 718. 2 provides a number of sentencing principles to be considered by the court including:

> (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender shall not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

The sentencing amendments to the *Criminal Code* have placed an emphasis on decreasing the use of incarceration. As noted by the Commission in its first Interim Report, the Supreme Court of Canada in *R. v. Gladue* has described the 1996 amendment package as a totally new approach in criminal law reform:

> **With respect for the contrary view, we do not interpret s. 718.2(e) as expressing only a restatement of existing law, either with respect to the general principle of restraint in the use of prison or with respect to the specific direction regarding aboriginal offenders. One cannot interpret the words of s. 718.2(e) simply by looking to past cases to see if they contain similar statements of principle. The enactment of the new Part XXIII was a watershed, marking the first codification and significant reform of sentencing principles in the history of Canadian criminal law. Each of the provisions of Part XXIII, including s. 718.2(e), must be interpreted in its total context, taking into account its surrounding provisions.**

At sentencing in all levels of court, judges should be willing to allow and actively support community participation when possible. Section 718.2(e) of the *Criminal Code* and section 38(2)(d) of the *Youth Criminal Justice Act* state that in sentencing a court must take into consideration the special circumstances of First Nations and Metis offenders. Allowing community members to express their concerns and support is one means of doing so.

For judges to seriously consider community involvement in sentencing, the community must have adequate resources. This requires a shift in allocating resources, with a new focus on community programs and away from traditional institutions and imprisonment.

Recommendation 6.8
This Commission recommends that all levels of court be encouraged to use community based sentences for all offences (unless specifically prohibited by law) and that every level of government redirect resources to fund community based projects and help to facilitate community participation in sentencing.

A guiding principle in the development of community justice is that it be flexible. It is apparent that the efforts made by judges to involve communities are beneficial. The opportunity for success of community justice initiatives is boosted when judges are aware of each community's unique needs and goals.

As emphasized elsewhere in this report a movement by the courts towards community justice is only part of the solution in our complex social and economic situation.

> **Justice systems address symptoms, not causes, of crime and social disruption. Over the last three decades, there has been a growing dissatisfaction with the North American justice system's ability to reduce crime and social disruption. There has been a considerable degree of disagreement as to whether this failure is because the system is too punitive or is not sufficiently punitive. There is little disagreement, however, on the point that a very costly system is producing very unsatisfactory results. There is a danger, however, in assuming that community justice systems on their own can reduce crime rates and social disruption. Unless social and economic conditions are also addressed, a move to a community justice system can, at best, ensure that justice is administered in a more effective manner that is accepted as legitimate by the community.**
> (Manitoba Aboriginal Justice Implementation Commission)

or example, the Restorative Circle Initiative in Saskatoon is a pilot project with ne court directing matters be dealt with in a circle format. This project began une 1, 2003, and has funding from Justice Canada and Youth Canada until March 1, 2005. The King George Community and School Association oversees it.

he Restorative Circles Initiative is designed to allow young persons to be held ccountable for their behaviour and participate in community reintegration by uilding a team of family, volunteers and human service professionals. The estorative Circles Initiative forums can be conducted by a judge or by one of the aff members of the initiative.

Therapeutic Court

The Commission's third Interim Report mentioned the concept of a therapeutic court. Therapeutic courts have been described to this Commission in the following terms:

> **In that part with the courts, the courts have led in a number of jurisdictions, and the federal government has even provided extra funds to try and develop this, with what are called therapeutic courts. Those could be drug courts, family violence – domestic violence courts, mental health courts. And in those courts the judges, in fact, have a far greater role than the traditional view that was expressed, and they do get very involved. There is a full resource team that is right closely associated to the court. The court is always involved in monitoring how that plan is working and, in fact, the experience so far is that that involvement, bringing the judge into that forum, is key. It is what is key to the success, and having it in a transparent place, the public courtroom where the public can see what's happening, and the end result is usually not jail, but that the plan is followed and it's almost like a graduation ceremony instead of a sentencing at the end, and there's a great deal of joy. And, say, in a mental health court, the psychiatrist is there. In the domestic violence or family violence court, the family is there. So these things are what many people consider to be the way of the future.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The Commission heard in an overwhelming number of presentations that charges of criminal behaviour in Saskatchewan are often related to alcohol addiction, drug use, families in crisis, family violence and an ever increasing number of children and adults with fetal alcohol spectrum disorders (FASD). The Commission is convinced that these problems should be dealt with in a therapeutic court where a judge can monitor rehabilitative treatment.

As noted in the Commission's third Interim Report, the North Battleford Domestic Violence Court is a project started by a Provincial Court Judge. Her Honour Judge V.H. Meekma has, through her own initiative, coordinated services available in North Battleford into a Domestic Violence Court. Judge Meekma's determined efforts are commended by this Commission. This innovative response that joins partners in justice reform is an example of a therapeutic court in Saskatchewan. The Provincial Court is responding similarily in Spiritwood, Saskatchewan.

Nevertheless, the Commission is frustrated with the lack of financial support for therapeutic courts by all levels of government. Without full financial commitment therapeutic courts in Saskatchewan could fail. An example of potential failure caused by lack of funding is the Circle Court project in

Saskatoon. It was created and designed with the direction of Her Honour Judge M.E. Turpel-Lafond. It was to provide a fully integrated, restorative response to criminal behaviour.

The Circle Court project envisioned participation of Elders and the community dealing with the causes of criminal behaviour in a manner respectful of First Nations and Metis cultures and beliefs. However, the co-operation of the departments of Learning, Health and Justice and the community resources needed for its success have not been supported by funding agencies. Resources should immediately be provided to ensure the Circle Court can operate as was intended.

Recommendation 6.9

This Commission recommends that a Therapeutic Court, preferably mobile, with the capacity to address issues such as alcohol and other addictions, fetal alcohol spectrum disorders, families in crisis and family violence, be immediately established and implemented in Saskatchewan and that new funding be provided specifically by all departments and levels of government, including First Nations and Metis governments, to facilitate an integrated response to the root causes of criminal behaviour.

In addition to establishing a thereapeutic court, the Commission encourages all levels of court in Saskatchewan to incorporate therapeutic approaches where feasible to promote successful outcomes.

B) Alternative Measures as a Framework for Community Justice

This framework explains how existing justice procedures, and in particular alternative measures, may be utilized to assist Saskatchewan people in the resolution of justice issues in their community. Alternative measures programs focus on handling criminal matters referred by police and Crown prosecutors pursuant to section 717 of the *Criminal Code*. Alternative measures offer the accused of a criminal offence the opportunity to take responsibility for their behaviour and to address the harm that has been committed by participating in a program that resolves cases within a community agency or with community participation.

Community justice programs may also participate in the provision of alternative measures programs, but perform a variety of other functions outside the formal criminal justice system, such as conflict resolution, public education and crime prevention.

Alternative Measures Provisions of the Criminal Code

As stated in Chapter 4, the sentencing provisions of *Criminal Code* emphasizes the use of formal criminal justice procedures only as a last resort once the protection of the public is satisfied. The *Youth Criminal Justice Act* contains similar provisions (see Appendix 9). Whether these provisions are classified as alternative measures, applicable to adult offenders, or extrajudicial measures, applicable to young persons, the result is the same: they provide the means to manage offending behaviour within a community.

Saskatchewan needs to increase these opportunities and make them readily available. There are five areas in the *Criminal Code of Canada* and the *Youth Criminal Justice Act* that should be developed immediately to give the alternative measures provisions full meaning:

1. Any program of alternative measures must be authorized by Saskatchewan's Attorney General, as set out in section 717(1)(a) of the *Criminal Code*; (section 10(2)(a) of the *Youth Criminal Justice Act* refers to a program of sanctions). This concept must be fully developed to allow First Nations and Metis communities the authority and resources to continue the development of effective community justice committees or other justice delivery vehicles so that they may be approved for a program of alternate measures.

2. The person authorizing the use of alternative measures should involve community members in this decision.

3. Alternative measures should not only be available to a person who accepts responsibility for the act or omission, but should also be available where a person does not contest the act or omission.

4. The availability of alternative measures should be voluntary but not be restricted by artificial government policy. Alternative measures must be available for all offences, where the protection of the public is addressed, with the exception of homicide.

5. The courts should use community justice vehicles for sentencing purposes when probation or conditional sentences are imposed. They should also be relied upon when developing and implementing release plans for inmates.

Alternative Measures Programs

Alternative measures programs are the vehicles that will allow community justice, as an alternative to the criminal justice system, to succeed. Before alternative measures programs can be used, the Attorney General of Saskatchewan must approve them. These programs should be defined broadly to allow a community to choose and develop an alternative measures program that best fits its particular needs.

Justice can be returned to the community through existing provisions of the *Criminal Code*. As recommended in this Commission's third Interim Report, establishing broadly based community justice initiatives must be given priority. Appropriate resources and authority are required to effectively deliver alternative measures programs. This Commission was told that any new justice measures must be built on mutual respect, working towards a common goal, and with First Nations and Metis participation and governance. These are the principles that must form the basis of an alternative measures program. (The principles of community-based justice were developed in the Commission's third Interim Report.)

Recommendation 6.10

This Commission recommends that the Government of Saskatchewan continue to work with communities, in collaboration with the Government of Canada and First Nations and Metis Governments, to establish community justice programs which will qualify as Alternative Measures programs under S.717 of the ***Criminal Code of Canada.***

Authority to Decide on Alternative Measures

Both section 717 of the *Criminal Code* and section 10 of the *Youth Criminal Justice Act* authorize the use of alternative measures or extrajudicial measures. Once it has been established that the use of alternative measures is not inconsistent with the protection of society, a number of other conditions must be met. The authority to refer a case to an approved alternative measures program has conventionally been exercised by a police officer or a Crown prosecutor. However, there does appear to be some flexibility in the legislation as to who will have the authority to refer a case to a community based program.

Clearly the police and prosecutors should have a role in this decision. However, equally important, the community must be able to participate. For example, an Aboriginal liaison person (See Recommendation 5.9.2.) familiar with the community and the programs available should be given the opportunity to take part in the referral decision. If a community does not have an Aboriginal liaison person it could designate someone from the community justice program. The Aboriginal liaison person should also be able to apply for a review of any decision not to refer a case to the alternative measures program.

Recommendation 6.11

This Commission recommends that:

6.11.1 An Aboriginal Liaison person (or other approved community designate) participate in the decision as to whether to refer any alleged criminal behaviour to the community Alternative Measures program.

6.11.2 The Aboriginal Liaison person (or community designate) have the ability to apply to the Implementation Commissioner's Office to review a decision whether to refer alleged criminal behaviour to Alternative Measures. The Implementation Commissioner's Office must have the authority to access all material relating to this decision, to review it, and to advocate for the reversal of the decision where appropriate.

Broadening the Availability of Alternative Measures

Currently, section 717(1)(e) of the *Canadian Criminal Code* requires that the alleged offender " … accepts responsibility for the act or omission that forms the basis of the offence …" This provision is mirrored in section 10.2(e) of the *Youth Criminal Justice Act*. However, in many instances the offender may not be able to accept responsibility due to a lack of memory or the inability to meet the burden of accepting responsibility. Given the current provisions of the *Criminal Code*, there is less opportunity for offenders to deal with their offending behaviour outside the court process. The Commission recommends that both statutes be amended to deal with this.

Recommendation 6.12
This Commission recommends that the Government of Canada amend s.717(1)(e) of the *Criminal Code of Canada* **and S.10.2(e) of the** *Youth Criminal Justice Act* **to read as follows:**

> **(e) the person accepts responsibility for their actions or does not contest the act or omission that forms the basis of the offence that the person is alleged to have committed.**

Alternative measures must not be restricted by a list of offences that qualify for community justice. As the Commission has said, all offences must be eligible, with the exception of homicide.

Recommendation 6.13
This Commission recommends to the Government of Saskatchewan that all offences, whether Provincial Regulatory offences or *Criminal Code of Canada*, **including spousal assaults and excepting homicide, be eligible for Alternate Measures.**

C) Community Partnerships in Justice

As the Commission has indicated, conditional sentencing and probation are other areas where the community can take responsibility. Alternative measures are available at the start of the criminal process; however, conditional sentencing is available at the end. Both mechanisms allow the community to take control of offending behaviour. The community justice committee, or whatever other vehicle delivers community justice, should be central to alternative measures, probation, conditional sentencing and parole.

Sections 718 through section 742 of the *Criminal Code* deal with conditional sentencing. These provisions allow an offender to serve a sentence in the community. Similar community based sentences are available under section 42 of the *Youth Criminal Justice Act*. It is important that all governments strengthen and fund community based resources to facilitate both community based sentences for all sentences (unless specifically prohibited by law) and community participation in sentencing.

Recommendation 6.14

This Commission recommends that all levels of government work towards the closure of incarceration spaces and divert resources thus saved to community-based alternatives.

In some instances, the courts must separate offenders from the community by imprisoning them. Most of these offenders have definite release dates and reintegration can be planned. The Commission believes that these plans must include the community to which the offender will return.

The *Corrections and Conditional Release Act* allows for significant partnerships to be formed between Aboriginal communities and Correctional Service of Canada (CSC). One of the two purposes of the *Corrections and Conditional Release Act* is to assist the rehabilitation of offenders in their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community. Of particular note are sections 81 and 84 which contain specific provisions regarding the role of First Nations and Metis communities in both the provision of correctional services and parole plans of First Nations and Metis offenders. For instance, CSC is authorized to negotiate care and custody agreements with First Nations and Metis communities. Additionally, the Service is legally obligated to involve First Nations and Metis communities in proposing and carrying out release and reintegration plans for First Nations and Metis offenders who have expressed an interest in returning to their home communities.

Section 81 allows for the transfer of an offender to the care and custody of an Aboriginal community at any time during his or her sentence, from the date of sentencing to the date of warrant expiry. This can involve the supervision of offenders in such cases as day parole, full parole or statutory release. Correctional Service of Canada in *Enhancing the Role of Aboriginal Communities Booklet* provides four categories of the types of services that can be provided under section 81:

1. The transfer of an offender to an Aboriginal community under a Section 81 Custody Agreement;

2. The operation of an urban, or rural-based facility designed for Aboriginal offenders, to which more than one offender may be transferred or may reside while on conditional release (e.g., a halfway house, a healing lodge, etc.);

3. Parole supervision or services offered in the Aboriginal community or an urban centre; and

4. Correctional services delivered within federal institutions or by community parole offices.

The first principle governing the application of section 81 is: "The protection of society and the safety of the community are paramount." To satisfy this principle, CSC emphasizes that any risk presented by the offender must not exceed what can be safely managed by the community.

Section 84 of the *Corrections and Conditional Release Act* requires Correctional Service of Canada to seek the community's involvement when an offender expresses interest in returning to an Aboriginal community. Adequate notice of the inmate's parole application must be given. CSC will assess the needs of an offender who wishes to correct his or her behaviour and the offender will participate in developing a Correctional Plan. The Aboriginal community must be provided the opportunity to propose a plan for the inmate's release to, and integration into, the Aboriginal community. In addition to specifying programs and activities that the offender will pursue, the plan will outline the community's role in ensuring that his or her reintegration is successful.

An essential component to this section 84 of the *Corrections and Conditional Release Act* is the identification by the community of the resources available in their community that will facilitate a safe release and continued law-abiding behaviour in the community. CSC suggests that consideration may be given to: programs or resources available in the community, such as Elders, Native Alcohol & Drug Addictions Program worker, Mental Health workers; employment opportunities or other options in meeting the offender's financial needs; living arrangements; identification of possible community support people; concerns regarding any victim issues; monitoring the offender's behaviour; and, the expectations of the community with respect to the offender's behaviour in the community.

CSC notes that it is important for it to have a contact person in the community who will be responsible for coordinating the development of release plans. This person or group must be authorized to speak on behalf of the community. For example, these people may be involved in community justice communities, or they may be the Justice Worker.

These sections provide an opportunity for communities to play a greater role in correction services. Such undertakings, however, require that the offender, CSC and communities have an effective working partnership and the resources available to ensure the development of long-term success.

Recommendation 6.15

This Commission recommends that adult correctional centres, youth custody facilities, and Correctional Service of Canada work cooperatively with community justice programs, Probation Services and the offender in the design and implementation of reintegration plans.

Community Justice Committees

Community Justice Committees (CJCs) are responsible for community participation in the justice process in some locations. These committees are usually made up of several volunteers from the community who work to provide justice services such as accepting alternative measures referrals in many rural communities and assisting justice workers in community justice programs operated by First Nations and Tribal Councils.

> **The one thing that I think has been very positive that has happened in a number of communities have been the formation of the community justice committees that have been established at the community level to be able to deal with programs and diversionary kinds of activities, particularly for first time offenders or for people whose offences are deemed to be such that they could be dealt with outside of the courts.** (Speaker, Metis Nation Saskatchewan Eastern Region (Melfort) Community Dialogue)

The Commission recognizes the Prince Albert Grand Council's community based team approach as an example that encourages partnerships and increases the community's ability to respond to justice issues.

CJCs may handle cases in which the law has been broken and/or perform advisory, public education and crime prevention activities. The legal basis of a committee's work with youth aged 12 to 17 inclusive is Section 18 of the *Youth Criminal Justice Act* and the *Youth Justice Administration Act*. The legal basis for a CJC's work with adults is through a service agreement with Saskatchewan Justice and Section 717 of the *Criminal Code*.

It is possible that with more funding and support Community Justice Committees could play a much more significant role in the justice process. From pre-charge diversion to sentencing, the committees could anchor all restorative justice. They could work with youth and families in schools and create a way to supervise diversion projects, alternative measures and conditional sentences. They could also coordinate and assist with activities such as sentencing circles and community-assisted hearings.

The Commission was told that Community Justice Committees have already made significant contributions to the justice landscape in Saskatchewan. However, the Commission is also aware that in some cases, due to lack of funding, they have been unable to make a consistently forceful contribution. Each committee should have at least one full time employee to oversee its activities and to act as the point person for justice concerns. Just as we cannot expect lawyers, judges, police officers or probation officers to volunteer their time, it is not right to ask members of these committees to work without pay. We would hope that a level of remuneration would contribute to the availability of stable and long-term programming.

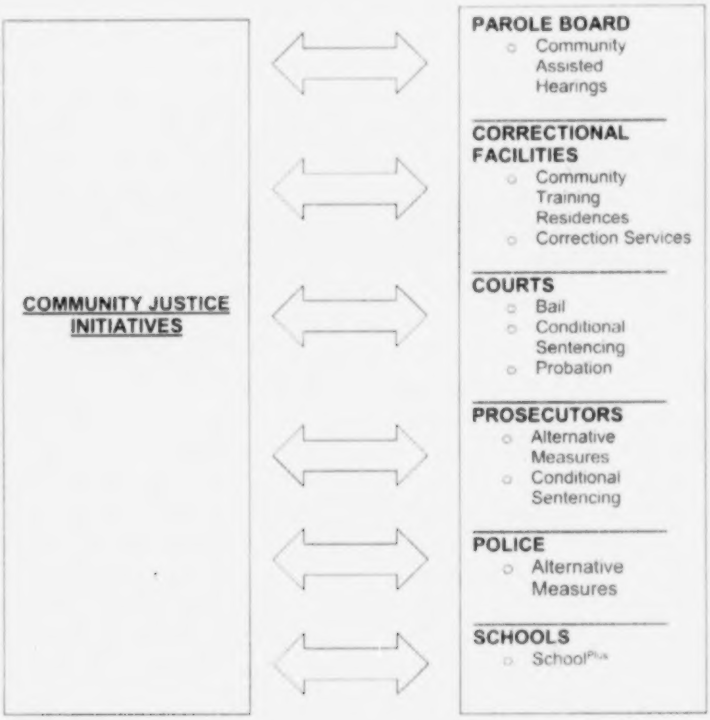
Recommendation 6.16
This Commission recommends that:

6.15.1 Where requested by the community, all levels of Government should assist in the establishment and funding of Community Justice Committees.

6.15.2 Members and employees of Community Justice Committees be appropriately remunerated.

The Justice Partnership

The Commission believes strongly in the development of reciprocal relationships between justice institutions and communities. Every step in the justice process should be marked by consultations with each other. Again, we reiterate that consideration must be given to referring parties to community based justice programs whenever possible.



D) Lawyers in the Courts

An overwhelming majority of criminal charges, approximately 98 per cent, are resolved in the Provincial Court of Saskatchewan. According to Saskatchewan Justice, in 2002-03, the Provincial Court presided over 27,463 cases. On average, for every case there are two charges, for a total well above 50,000. Those charges were dealt with by 47 Provincial Court judges sitting in 13 permanent court locations and 77 circuit court points throughout the province. Some of these circuit points are in remote locations such as South End, Fond du Lac, Black Lake, La Loche and Sandy Bay. Approximately 152 lawyers work for Prosecutions and Legal Aid in Saskatchewan.

Clearly, these individuals face a staggering workload. With the number of cases it would be difficult to keep up with their most basic job requirements, let alone apply innovative restorative justice concepts.

Crown Prosecutors

The size of the Public Prosecutions Branch has doubled in the last 15 years. In 2002, 80 Crown prosecutors in Saskatchewan operated out of 11 offices. Saskatchewan Justice employs them directly. Crown prosecutors are responsible for all *Criminal Code* prosecutions, whether they are resolved by guilty plea, trial in Provincial Court or Queen's Bench, or through some other measures.

Prosecutorial Discretion

After a matter comes to the attention of the police and their investigation is complete, a decision must be made. Police may lay charges within their own discretion, and prosecutors then review the charges by way of a post-charge review. The police may also bring investigation results to a Crown prosecutor who decides whether to proceed with criminal prosecution. This evaluation involves three criteria:

1. Does the investigation provide sufficient evidence of each element of the offence?

2. Does the strength of the evidence suggest there is a reasonable likelihood of conviction?

3. Does the public interest require that a prosecution be conducted?

The third criterion allows individual prosecutors to apply their own discretion. Public Prosecutions indicated to this Commission that they are willing to refer more charges to restorative justice initiatives. However, prosecutors believe the services to initiate and complete alternative measures are limited or inadequate.

The Commission agrees with Crown prosecutors that alternative measures, to be effective, must be meaningful for both the victim and the offender. It is of the utmost importance that any agreement reached between victim and offender be implemented or the process will break down. It is at this point that lack of resources has a negative result. Often there is a lack of community assistance for the offender to complete the agreement. This prevents the implementation of healing plans and can lead to charges being re-laid or to new administrative charges for violating undertakings to the court.

Though community resources are limited, prosecutors must be encouraged to explore all options that may be available within the community. Prosecutors, police and legal aid lawyers should be encouraged to meet with the various community agencies to establish and maintain relationships with the community based resource providers.

Recommendation 6.17
This Commission recommends that a comprehensive list be created, and regularly maintained, of all community based justice services available by the Government of Saskatchewan. This list should be provided to all prosecutors, legal aid lawyers and private defence counsel.

In Prince Albert a pre-charge screening project has been established as a pilot project. It applies only to Prince Albert Police Service files. Essentially, it has police bringing an investigation file to the prosecutor before laying charges. The prosecutor reviews the file, and recommends what, if any, charges should be laid. There is some resistance from police to this screening as they view it as interference in their role. However, the Commission views the input of a legally trained person and representatives from the community as necessary in deciding to lay charges.

The Commission understands the cost implications of pre-charge screening across the province. However, the Commission believes that this is an excellent model, which is being used in other jurisdictions, and should be implemented across Saskatchewan. Pre-charge screening also provides an opportunity for the Crown prosecutor to review the police officer's decision regarding alternative measures. (See Chapter 5 – Policing.)

Recommendation 6.18
This Commission recommends that a pre-charge screening process with community involvement be immediately implemented throughout Saskatchewan by the Government of Saskatchewan. As part of pre-charge screening, Crown prosecutors should be instructed specifically to consider whether the matter in question could be referred to a community-based justice initiative as an alternative to Court.

Saskatchewan Legal Aid Commission

In 2002, the Saskatchewan Legal Aid Commission employed 72 lawyers. Saskatchewan Justice provides an annual grant to the Commission. The federal government shares the cost of legal aid adult and youth criminal matters. As noted previously, Legal Aid also provides services for family legal matters. Legal Aid is extended only to persons and organizations that are unable to pay for legal services. The vast majority of defence lawyers who appear in Provincial Court are from Legal Aid.

The Saskatchewan Legal Aid Commission and people in northern communities identified issues that arise from Legal Aid lawyers serving clients over long distances.

> **The Legal Aid system just doesn't work in Northern Saskatchewan. The Legal Aid Lawyers don't even spend enough time consulting with the individual that is going to court. They come to court, well, you've got maybe 40-50 people that are going to court, got to see them before they go to court, they got maybe two, three minutes, maybe five minutes, that's the most he can do. A lot of people are choosing not to deal with, to access Legal Aid. They're just speaking on their own.** (Speaker, Beauval Community Dialogue)

> **The Saskatchewan Legal Aid Commission has 15 offices located in 12 communities. Currently, there are 66 drive-in court points and 13 fly-in points. The lengthy travel distances for court officials, lawyers and clients hamper the ability of the lawyer and client to discuss matters face to face. As all legal aid clients are poor, many clients do not have vehicles nor drivers' licences and there is little public transportation available in rural and remote areas of the province. Many clients do not have access to telephones nor long distance privileges. All legal aid offices have toll-free lines, but this does not alleviate the lack of access to private phone conversations in many remote and rural communities. The distances between legal aid offices and the clients are felt more profoundly by women clients who may have few options for childcare.** (Speaker, Saskatchewan Legal Aid Commission presentation)

Legal Aid lawyers should be given time to travel to communities in advance to conduct client interviews and prepare cases. It is important for Legal Aid to be more visible in the communities as this could strengthen its level of credibility.

> **We need more time with our clients, we really do, and we recognize this. It's really frustrating for us to deal with clients that we don't have enough time to spend time with. And the contact problems are astronomical. We're just too far away. It would really be nice if there was enough funding to either hire more staff to be able to come out on a more frequent basis, have less of a caseload, so that in an area they're getting to know the community.** (Speaker, Onion Lake Community Dialogue)

During the community dialogues problems in Legal Aid services were pointed out. Facilities are not available for private client interviews. There are no specific times and areas for residents to inquire about family law matters. Information about alternatives to the court process is not on hand.

> When I've seen the lawyers and judges come up, I have not seen a lot of privacy, and I have only seen them come up with criminal matters. And to me – see, I know a lot of people here as people, real people, and I've had people come to me, men and women, come to me over financial matters, come to me over forms and legal forms that they need to deal with, come over to me over potential bankruptcy and ask for my advice. There is not the time, or the person, or the privacy on those court days to deal with those issues. And there are real people living here, with real problems, not just victims and not just perpetrators. (Speaker, Black Lake Community Dialogue)

Recommendation 6.19
This Commission recommends that the Saskatchewan Legal Aid Commission create First Nations and Metis articling positions and actively recruit First Nations and Metis lawyers.

Recommendation 6.20
This Commission recommends that the Government of Saskatchewan provide a toll free telephone line where people can get reliable, up-to-date information on family law matters.

Recommendation 6.21
This Commission recommends additional funding be provided to Saskatchewan Legal Aid Commission to hire more lawyers and provide broader legal services.

E) Corrections

> Let's talk about corrections. Corrections doesn't exist in Saskatchewan. There's incarceration; there's no corrections. They used to have workshops at the Correctional Centre where people used to be able to take trades. Today you go out there and you cut pallets for IPSCO. I know from experience. I have been through the system. I have suffered through the system and I still suffer for being a businessman and being an Aboriginal at that. It makes it very tough. (Speaker, Regina Friendship Centre Community Dialogue)

Corrections includes imprisonment, parole supervision, probation and conditional sentencing. The primary objective of corrections is to encourage an end to criminal behaviour, either in a community or institutional setting. In some instances the offender must be separated from society for its protection.

Saskatchewan Corrections and Public Safety's mission is to promote safe communities by providing a range of controls and reintegration opportunities for offenders. The federal *Corrections and Conditional Release Act* states:

> **3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by**
>
> **(*a*) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and**
>
> **(*b*) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.**

The Commission believes that at both the federal and provincial levels, the correctional system must continually reduce the number of beds available and transfer these resources to community programming.

Imprisonment

On any given day in 2001 in this province, one in seven First Nations and/or Metis men and one in fifty First Nations and/or Metis women were under the supervision of provincial and federal correction authorities. (Supervision includes probation, conditional sentences, remand, sentenced custody and parole.) As stressed in Chapter 9 - The Benefits of Change, imprisonment is not a cost-effective response to crime. Given Saskatchewan demographics and current crime statistics it is apparent that in the next generation dealing with criminal behaviour will become cost prohibitive unless significant change in the criminal justice system occurs.

Myth: Imprisonment Reduces Crime

In May 2002, the Solicitor General of Canada investigated whether imprisonment reduces crime. A review, by P. Smith, C. Goggin and P. Gendreau, was done of 111 studies involving 442,000 offenders sentenced in a variety of ways. The conclusion was that harsher punishment did not reduce future criminal acts. In fact, harsher punishment actually increased chances that offenders would commit an offence again.

Imprisonment will not reduce crime. This has been proven through research and the failure of Saskatchewan's "get-tough" practices. Saskatchewan incarcerates more youth per capita and still has the highest crime rate in Canada. Politicians, judges and court system participants must provide accurate information to the public about the failure of imprisonment as an effective deterrent to crime.

> **One of the biggest barriers to overcome is the false belief among the public, politicians and even some criminal justice officials that tinkering with penalty levels or other parts of the system will improve community safety in Canada. Accurate information which contradicts this view must be made known, without discounting people's legitimate concerns.** (The Church Council on Justice and Corrections)

Young people in trouble with the law have been verbally attacked by politicians of virtually every stripe and ideology. What's missing from the inflamed rhetoric is any credible evidence that harsher punishment will create the positive, contributing young citizens we all want and hope to see. Amid the many calls to get tougher, where do we find the benchmark for how tough is tough enough? (Macrae, 2000)

> **There's a growing awareness that imprisonment should be reserved for offenders who pose the greatest risk to society, while low-risk offenders are being managed through community-based programs and supervision. Reducing the reliance on incarceration can only occur if there are adequate, safe and appropriate ways of managing lower-risk offenders in the community. The right type of intervention is critical. Inappropriate intervention or sentencing offenders without providing the right interventions does not reduce re-offending.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

Recommendation 6.22

This Commission recommends that a public education campaign be designed and implemented by all levels of Government directed at providing accurate information on the benefits of non-custodial alternatives to imprisonment and re-integration into the community.

The Commission was struck by the concern raised in the northern Community Dialogues about the negative effects of holding or imprisoning people at a great distance from their communities. We note that communities want facilities that are accessible to family and community members. This is necessary to ensure offenders have the best opportunity to rehabilitate and then reintegrate with their families and communities.

> **I know how it feels to have penitentiary doors close behind you when you walk in. Welcome to the world of loneliness. I know how it feels when my little daughter came with my wife to visit me when I had four years to go. "Can Daddy come with us?" How can I go? I have four years, still got four years to go.** (Speaker, Black Lake Community Dialogue)

When First Nations and Metis offenders are imprisoned it is important that their right to take part in spiritual programming is honoured. The Commission believes it is important that First Nations and Metis people have access to Elders and traditional ceremonies and are also able to seek the support of other religious faiths.

Recommendation 6.23

This Commission recommends to Correctional Service of Canada, Saskatchewan Justice and Corrections and Public Safety, that access to cultural and spiritual programming, whether traditional or religious, be made more available to First Nations and Metis people who are incarcerated in Saskatchewan.

Recommendation 6.24

This Commission recommends to the governments of Canada and Saskatchewan that more resources be provided to community service providers to develop and operate programs designed that aid offenders with their transition into the community when they are released from prison institutions.

It was indicated to the Commission that more assistance must be made available to men to make a satisfactory transition from jail to community.

> **Some have been in jail a long time (6 months or more). Life on the street can be stressful on someone fresh from jail. A pre-release program that starts a week before release and continues a week after might help. It would deal with temptations and sour relations with people. Job searching and job set-up. Resume workshops.** (Written submission from inmate at Saskatoon Correctional Centre)

The Commission believes it is of utmost importance that substantial community programming be established to assist First Nations and Metis men and women released from prison. The Commission has heard and believes that if there were stronger support there would be fewer relapses.

> **The long accepted practices of First Nations peoples throughout the world are recently the focus of many studies which confirm that the experiences of expressing one's self and culture through forms of creativity, sacred symbols and rituals are profound contributions to well-being on all levels. The power of story and music and dance are taken for granted in First Nations cultures yet are not the focus of many of the opportunities offered to inmates.** (Jevne, 2004)

Within the federal system, offenders who have been detained until the end of their sentence because of violence in their criminal history are not permitted, by legislation, to leave the grounds of institutions for First Nations and Metis healing ceremonies, such as the Sun Dance Ceremony.

A request was made to the Commission to recommend that the *Corrections and Conditional Release Act* be changed. In the meantime, if an offender involved in cultural programming in an institution has the support of the Elders and the warden, will be strictly supervised during the absence (usually no longer than five days) and has the support of the National Parole Board, the NPB should be able to request that the offender be considered for medical leave to attend healing ceremonies. The Commission concurs with the sensibility of this request.

Recommendation 6.25
This Commission recommends to Correctional Service of Canada that, prior to a change in legislation, and given the healing nature of ceremonies, medical leave be granted to detained offenders to attend spiritual ceremonies outside the institution grounds for the purpose of healing if an offender has been involved in cultural programming in the institution, has the support of the Elders and Correctional Service of Canada, will be strictly supervised during the absence and has the support of the National Parole Board.

Imprisonment of Women

The imprisonment of women has serious effects on First Nations and Metis society. Historically, the number of women in prison is lower than men. However, when the Commission toured Pine Grove Correctional Centre for women in Prince Albert, the shortage of resources and programming was evident. The Commission accepts the suggestion that the programming needs of imprisoned First Nations and Metis women must immediately be made more focused and available.

> **Women that are serving a sentence in a correctional institution should be provided with programs that will benefit them when they return to the community. Emphasis needs to be on the needs of the women, not on the numbers of people that can attend a program. If a program will benefit a small group then it needs to be provided to them, either in the institution or more beneficially through partnering in the community. Women can leave the institution to go out to community programs and groups. The payoff may be fewer women returning to prison.**
>
> **Why not encourage women to use their time of incarceration as a time to learn new skills? If a woman could come out of jail with a skill that would allow her to find employment, it would be highly unlikely that she would have to commit property-based crimes.** (Speaker, Elizabeth Fry Society presentation)

The Commission understands the high turnover of offenders at the Pine Grove Correctional Centre, along with a shortage of funding, makes the continuity of programming difficult. However, it believes resources must be made available to facilitate programming and family interaction for women serving sentences.

Recommendation 6.26
This Commission recommends that Pine Grove Correctional Centre continue and expand its work with community agencies to provide programming which addresses the distinct needs of women in prison institutions and that the resources be available for them to do so.

Okimaw Ohci, a women's facility on the Nekaneet First Nation in the Cypress Hills near Maple Creek, can accommodate 30 women. They are mostly federal offenders serving sentences of two years or more and have been classified as minimum or medium risk.

All female offenders who qualify may apply to this healing lodge under condition they will accept First Nations and Metis culture, spirituality and healing practices. Okimaw Ohci uses Elders in planning and implementing healing strategies. The use of culture is applauded.

> **I really am looking at this in a way that instead of incarcerating women with children that maybe we could have an apartment block or housing where these women with children could go to serve their time. At least then they would be kept with their families and their children would continue with the bonding.** (Speaker, Central Urban Metis Federation Inc. presentation)

Community members and inmates told the Commission that children are profoundly affected when their mothers are imprisoned. The Commission believes alternatives are needed, in appropriate cases, for women with children to enable development of healthy family relationships and enhance rehabilitation.

Several times inmates expressed exasperation and disappointment that the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan seemingly forget about them once they are imprisoned.

Recommendation 6.27
This Commission recommends that consideration be given by the Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan to develop and deliver programs dealing with the effect of parental incarceration on children and the corresponding stresses of separation and reunification of families.

Young Offenders Programming

The Commission toured the following facilities for detaining youth in Saskatchewan – Paul Dojack in Regina, North Battleford Youth Facility, Yarrow Youth Farm near Saskatoon, Kilburn Hall in Saskatoon and Drumming Hill Youth Facility in North Battleford. Young offenders programming must focus on reintegration of youth into the community while making sure proper education and support are present there. Family involvement is to be encouraged.

> **There is no reintegration process after the youth are released from custody. The ball is dropped by both the justice system and society. There's no bridge between the two and families sometimes see incarceration as a good thing when there is a lot of disruptive behaviours with the**

> **youth. The families can settle down again, there's peace. There's no support for that family when the youth comes back. The youth senses that, they feel that, the alienation, that they're not welcome, that they're labelled and there's no real supports in the community to deal with that.** (Speaker, Saskatchewan Native Theatre Dialogue)

Recommendation 6.28
This Commission recommends to Corrections and Public Safety that plans for reintegration into the community be created as soon as youth are admitted to youth facilities.

The Commission endorses the principles of the *Youth Criminal Justice Act*, that youth should move from custody to community as quickly as possible. However, unless significant resources are devoted to community support, community activities and community supervision, the *Youth Criminal Justice Act* will fail many First Nations and Metis youth. Saskatchewan cannot afford the human or social costs of such failure. All levels of government must give priority to funding the ideas in the *Youth Criminal Justice Act*.

Recommendation 6.29
This Commission recommends that all levels of government immediately design and implement a funding strategy to fully resource the provisions of the *Youth Criminal Justice Act*, **particularly those provisions that address community supervision of youth.**

Community-Based Corrections

Community Training Residences are an example of an alternative to imprisonment. They provide a residential environment for offenders who are found by Saskatchewan Corrections and Public Safety to be in need of residential supervision while taking part in some form of community programming or employment.

An alternative to imprisonment may be to expand the number and role of Community Training Residences. This would allow offenders to remain in their communities to build positive relationships with their families and others. Addictions and culturally relevant programs could be offered, not only to the offender, but also to families. It would allow for programming to address specific needs.

National Parole Board

The National Parole Board is an agency in the federal ministry of the Solicitor General with exclusive authority under the *Corrections and Conditional Release Act* to grant, deny, terminate or revoke parole, or to detain offenders who are subject to statutory release.

The National Parole Board is directed by the *Corrections and Conditional Release Act* to make conditional release decisions for offenders in federal and territorial institutions. The Board has five regional divisions similar to those of the Correctional Service of Canada. The Prairie region consists of Manitoba, Saskatchewan, Alberta and the Northwest Territories. The Regional National Parole Board handles provincial cases, as there is no provincial parole board for Saskatchewan.

Parole is a form of conditional release from prison, which permits offenders to serve a portion of their sentence in the community, providing they abide by the conditions of their release. There are four types of conditional release under the *Corrections and Conditional Release Act* temporary absences, day parole, full parole and statutory release

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Recommendation 6.30

This Commission recommends that the Government of Canada appoint additional First Nations and Metis persons as members of the National Parole Board.

Probation

Probation is a sentence most often imposed for less serious offences. It requires a person to obey certain conditions. It does not necessarily require a fine or time in jail. Rather, the convicted person must obey certain requirements imposed by the court for a specified period. The *Criminal Code* lists mandatory conditions of a probation order and optional conditions that may be imposed in ss. 732.1(2) and 732.1(3). If the offender does not follow through on the imposed requirements a charge of breach of probation can be laid.

The *Criminal Code* allows for probation in three situations. A judge may suspend a sentence and place an offender on probation as long as there is no minimum penalty for the offence under section 713(1)(a) of the *Criminal Code*. A judge may impose probation in addition to a sentence that does not exceed two years. As well, if a person is serving an intermittent sentence a probation order is in force during the time spent outside custody.

Recommendation 6.31

This Commission recommends that an evaluation of probation and community justice services be undertaken to ensure such services are meeting the needs of individuals and communities.

Conditional Sentences

When a court finds a person guilty of an offence, the person may be sentenced to time in prison or be allowed to serve the sentence in the community as part of a conditional sentence. During a conditional sentence, the offender is supervised and must follow the rules set by the judge or risk going to prison. A conditional sentence is really a prison term that the offender is allowed to serve in the community. An offender who does not follow the court's conditions will be brought back to court and be ordered to serve the rest of the sentence in prison.

A judge may give an offender a conditional sentence if the *Criminal Code* does not set a minimum prison term for the offence and if the judge decides the sentence should be less than two years. Also, the judge must be convinced that allowing the offender to remain in the community is not a danger to the public and believe that a conditional sentence is consistent with the sentencing objectives set out in section 718 of the *Criminal Code*.

When offenders are sentenced to conditional sentences they must obey a number of conditions. The offender must be of good behaviour, go to court when required, report to a justice system supervisor regularly, stay in the area under the court's authority and get written permission to travel outside it, and inform the court or supervisor before moving or changing jobs.

In addition, a judge can tailor the sentence to the needs of the offender, the victim and the community by setting other conditions. For example, a judge might require the offender to pay the victim restitution, make other reparations to the victim or to the community, participate in a treatment program (alcohol, drug or anger management), provide support for any dependents, do up to 240 hours of community service work, or respect a curfew where the offender has to remain at home except to go to work or to other approved activities.

As noted in Chapter 4 - Restorative Justice, the Commission was frustrated to hear of the number of new charges that result from violations of bail or other release or sentencing conditions. These, in part, account for the numbers of youth placed in remand. System generated charges should be dealt with outside court by an Elder led team. These teams would monitor youth bail conditions and probation orders, particularly in urban centres. (See paper by Kearney Healy in Volume II of this report.)

Recommendation 6.32
This Commission recommends that the options of alternative measures, bail, probation and conditional sentences be employed instead of the use of remand and incarceration wherever possible.

Recommendation 6.33
This Commission recommends that Bail officers, Probation officers and Conditional Sentence Supervisors be scheduled so that their services are available on a 24-hour basis.

CONCLUSION:

The Commission believes that the 1995 *Blue Sky Report on First Nations Justice Development in Saskatchewan* was correct in its assessment of Saskatchewan's potential for justice reform. In this report prepared for Saskatchewan Justice, Her Honour Judge Mary Ellen Turpel-Lafond (then a professor and lawyer in Saskatoon), stated:

> **I cannot emphasize enough in this report how unique and significant the opportunity is for meaningful change in the Province of Saskatchewan. I have worked at the national level and in other provinces on these issues and it is my firm belief that all of the elements are present in Saskatchewan to creatively and successfully address the problems which First Nations experience in the criminal justice system. There is a wealth of ideas, proposals, talented people, unique institutions and committed communities which are joining together to give new meaning and definition to the concept of justice as healing. I have no doubt that the changes which are possible in the months and years ahead will be of national significance and in this respect initiatives in Saskatchewan will provide leadership. What is required at this stage, in my view, is some clarity and consensus on the agenda for reform and the critical path for change.**

This Commission holds guarded optimism about the future, but emphasizes that now is a critical time. The Commission believes that courage and leadership from Canada, Saskatchewan, and First Nations and Metis governments must be demonstrated. The Commission understands justice must be transformed to incorporate First Nations and Metis culture, traditions and beliefs. This means all people of Saskatchewan must be prepared to fundamentally shift their emphasis, their allocation of resources, their way of thinking about justice institutions and return justice to communities.

7

ELIMINATING RACISM:

CREATING HEALTHY RELATIONSHIPS IN SASKATCHEWAN

ELIMINATING RACISM: CREATING HEALTHY RELATIONSHIPS IN SASKATCHEWAN

INTRODUCTION

Racism prevents healthy relationships. It is a difficult and complex problem almost impossible to nail down and seems to be both systemic and pervasive. It can be deliberate or unintentional. It is destructive and cruel, and belittles and humiliates. It is difficult to prove because it is deep within a person's character. And it is quietly upheld in a society's history, institutions and policies.

> **One of the main things that I hope people understand is that Canada does have a history of racism, and racism is a social, political and economic historical phenomena that is very real, and when we talk about the criminal justice system and how it relates to the Aboriginal and people of colour here in this country, we must understand that racism is at the very bedrock of this criminal justice system**. (Speaker, Saskatchewan Coalition Against Racism presentation)

The creation of this Commission in November 2001 followed highly publicized events that were called racist by many people. It is, however, usually impossible to point a finger at any one part of the justice system. In the course of the Commission's work complaints were heard about racial discrimination involving corrections and conservation workers, social workers, retail sales people and others. A consistent theme was found in the dialogues: racism is alive and well in Saskatchewan, and it is hurtful.

> **Let people recognize clearly that every time they threaten someone or humiliate or hurt unnecessarily or dominate or reject another human being, they become forces for the creation of psychopathology, even if these be small forces. Let them recognize that every man who is kind, helpful, decent, psychologically democratic, affectionate, and warm, is a psychotherapeutic force even though a small one**. (Jevne, 2004)

The Commission heard that racism is taught at home, in the schoolyards and at work. Racism may be planted in children by parents who were not taught the true history of Canada or who may have had a negative experience with First Nations, Metis or non-Aboriginal people. Racism flourishes at school where peer pressure is a powerful incentive to treat others without respect. It survives in the workplace where poor leadership fails to prevent harmful behaviour. Subtle and unintentional racism is more difficult to recognize. It is made worse by wrong information.

"I don't want you branding them youth offenders," I said. "Do you realize that you call a child something and they're going to try and live up to that name?"
(Elder at Elders' Dialogue)

Negative images can be accepted and internalized. Identifying and accepting negative images of First Nations and Metis people becomes part of socialization. It begins with the development of self and ends up being a permanent part of society. (Sellers, 1999)

> **Stacking up the labels: diabetic, problem gambler, alcoholic, substance abuser, family violence. It goes on and on and on, just a huge burden of labels that many First Nations' families have to bear. How can you get out from under that and how can you project a positive self image even if you don't have any of those factors when all the labels are around you in huge numbers?** (Speaker, Federation of Saskatchewan Indian Nations Health & Social Development presentation)

Although racism is often unintentional, it cannot be ignored. It affects all of us. As individuals we are related to one another and everything around us. This is illustrated in the prayer closing, "All my relations," commonly used by Elders.

Eliminating racism is difficult, almost overwhelming. Racism dehumanizes people and leads to victimization. We must bring racism out in the open, look into our own prejudices and understand some of the injustices it causes. We then may be able to come up with practices that can help us to understand one another and bring about fairness. We may be able to replace acts of racism with trust and caring, and then respect. We may try to settle conflicts among ourselves, rather than going to the police and the courts. That would return justice to the community. We need to unlearn racism.

At the Commission's Racism Roundtable, a participant said:

> **It's going to take a many-pronged approach to eliminate racism in Saskatchewan. First recognize the problem, have people admit and agree that racism exists and get it out in the open so there's a forum, and go from there.**

At every community dialogue with the Commission, racism in the justice system was raised as a significant problem. Specific problems ranged from individual acts of racist behaviour to general complaints of systemic racism. Many people wish to see this problem disappear. They recognize a need for changes in attitude, behaviour and understanding. Many are sincere in their desire for a society that recognizes we are all part of one family. Therefore, while diversity is to be celebrated, fairness that achieves equality is simply "the right thing to do."

> **Before we, as a society, can liberate ourselves from the grip of racism we have to acknowledge that it exists and that it is not something that has been blown out of proportion. Neither is it a figment of people's imagination.** (Speaker, Canadian Race Relations Foundation presentation)

First Nations and Metis people have the same right to be accepted, as do all human beings. All are born into this world innocent, ready-to-be loved, full of human potential. Unfortunately, this right can be, and has been, taken away soon after birth. A life lived with dashed hopes, failed dreams and frustrated aspirations has caused many First Nations and Metis people to be overcome with mistrust, low self-esteem and anger. One result can be a life of crime, poverty, poor health and addiction, ending in suicide. For the good of our generation and future generations, whether we are victims or perpetrators, the responsibility for eliminating racism rests with all of us.

> **In our teachings, the most important thing in our community is our children. Everything that we do as a community is inherited by them. And racism is something that's sad and prolific in our communities, it's something our children inherit. And maybe as a community together, what we do here can change that.** (Elder speaking at Racism Roundtable)

This Commission's vision is to help bring about *Meyo Wahkotowin*, working together to create a healthy, just, prosperous and safe Saskatchewan. *Meyo Wahkotowin* forms the big picture for the Commission. We hope that all people in Saskatchewan will look honestly at their attitudes. We hope they will attempt to erase their prejudices and challenge discriminatory practices that they do or see done. We must work to create healthy relationships, to engage *"opintowin"*. There are references to racism in other chapters, particularly Chapter 5 - Policing.

Individual Racism

"Individual racism manifests itself in people's attitudes and behaviour," said Dr. Karen Mock, executive director of the Canadian Race Relations Foundation. A definition on the University of Toronto website says, "Personal [individual] racism is the belief in one person's racial superiority over another."

Speakers at the dialogues raised many examples of individual racism, particularly with respect to their treatment by police, the judiciary and the prison system. It is based on belief that other races are inferior and therefore not entitled to the same rights, privileges and responsibilities as one's own race. Bias, condescension, prejudice and discrimination are aspects of individual racism.

An example of individual racism occurs when a landlord decides not to rent to a First Nations or Metis person because of an unpleasant experience a landlord might have had in the past. The landlord believes the tenant, because of race, might damage the property, and tells the First Nation or Metis person that the space is no longer available.

> **My family still encounters doors shut because they can't get an apartment because of the colour of their skin or the stereotypes around that. Or can't get a job because of where they come from, or whatever.** (Speaker, Racism Roundtable)

Condescension

Condescension is a form of individual racism, a behaviour that flows from an attitude that others are inferior and which can cause a believer to feel racially superior. It may be worse than open racism because it does not necessarily appear to be racist. It can be conveyed by a gesture or a tone. It allows racist acts to be done without conscious intention of perpetrators who may detect no racism in themselves.

> **When there is an Aboriginal person picked up, right away the cops look down on our people. They think that all Aboriginal people are drunks. Just because they wear the blue coats, or the blue clothes, like, the uniforms, they think they are somebody.** (Speaker, Regina Friendship Centre Healing Program presentation)

A speaker at the Racism Roundtable gave another example:

> **Even going in a store, the way people treat you differently, you know, they don't expect you to be looking at this particular product because there's no way you could possibly afford it, so they don't help you, they help everybody else around you. It's the subtleties that make you start to doubt yourself and your own self-worth that are really harmful.** (Speaker, Racism Roundtable)

At the community dialogues the Commission heard that some correctional and conservation workers exhibit racism by making unwarranted generalizations. Some discriminate in the performance of their duties.

> **Even the RCMP refuses to deal with it. They say that SERM has the power to do what they want with you, basically, they can make you put your hands on the hood all day if they want. There's nobody to police them, they have the right to do what they want.** (Speaker, Beauval Community Dialogue)

During a tour of the Saskatchewan Penitentiary at Prince Albert, Elders working there gave the Commission an example of racism. This could be seen as individual racism, or systemic racism if the behaviour was part of policy or overall practice. Inmates told of verbal abuse from guards for participating in cultural ceremonies. An Elder described an incident where guards interrupted a Sweat Lodge ceremony to perform a head count. This is an example of the extreme disrespect shown by some staff at the institution. There should be a clear consequence for such behaviour.

Systemic Racism

"Systemic racism consists of organizational policies and practices which directly or indirectly operate to sustain the advantages of a certain social group or social race, and the disadvantages of others," says Dr. Mock. Systemic discrimination uses policies and practices which have become well established in institutions, resulting in barriers to equality for minority groups.

A process of recognizing *systemic racism* and working to identify, challenge and reduce it in all its forms is known as *antiracism*.

> **The current justice system is not trusted or respected by many First Nations people because First Nations have had no say in its creation, no say in the development of policies or laws. First Nations have had to endure attitudes of the practitioners and more than any other group of people we**

> **are disproportionately affected by the system.** (Speaker, Federation of Saskatchewan Indian Nations Health & Social Development Secretariat presentation)

One example of systemic racism is the approximately 120-year history of residential schools. According to the Canadian Race Relations Foundation, residential schools alienated thousands of primarily First Nations but also Metis children from their families, language and culture. This created century-deep wounds, termed "residential school syndrome," from which individuals are still healing.

> **It is often said that residential school systems and the generations of suffering brought to Aboriginal communities has been abolished. The so-called abolition of residential schools is nothing more than an illusion. When our prisons are spilling over with Aboriginal youth and when these prisons strip young people of their language, culture and identity, how can they honestly say that they have moved on? How can they tell us that they've improved? The residential school was never abolished, it only changed ship.** (Speaker, Youth in Care & Custody Network)

Cultural ceremonies such as the Sun Dance and Potlatch were forbidden under *Indian Act Amendments* of 1884. The prohibition was removed in the *Indian Act* of 1951. Being pushed underground over time, many of these traditions have been lost, and are only slowly being rediscovered through the teachings of Elders.

> **There were laws to keep us from having Rain dances ... I remember the days when you couldn't hold a Rain Dance or a Sun Dance. You had to go hide in the bush and have it, because the police came around they could arrest you. They could arrest you for playing a drum. They looked at that as some kind of an evil sort of ceremony where we were doing witchcraft, because that Sun Dance brought out the pride in us, brought out the Spirit in us, and made us stand up and say, look, we're proud of ourselves.** (Speaker, Treaty Four Governance Institute Community Dialogue)

Various versions of the *Indian Act* are often given as examples of open racism. The racism First Nations people endure is built right into the legislation and policies governing this country.

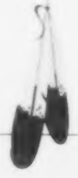
> **Back in the early 1865s in Regina, it was against the law for three Indians or more to communicate with each other in a group. It was called a riot, and that was Canadian law.** (Speaker, La Loche Community Dialogue)

> **For example, at one time there were federal laws that suppressed the legal rights of First Nations peoples to assemble for political purposes or hire a lawyer to argue cases against the Crown.** (Saskatchewan Justice and Corrections and Public Safety, 2004)

Backgrounder on the residential school system:

- The residential school system operated across Canada between 1800 and 1990, peaking in 1930 with 80 schools.
- Aboriginal children were often sent to residential schools far from their homes.
- The system contributed to loss of language and culture among Aboriginal people, as its key objective was assimilation of their children.
- The negative effects of these schools have been passed from one generation to the next.

For more information see Chapter 3.



Marginal - The status of groups who do not have full and equal access to the cultural, economic, political and social institutions of society.

The *Indian Act*, 1876 to the present, not only marginalized First Nations and Metis people, segregating them from mainstream society, it created greater division between First Nations and Metis people by instituting arbitrary status, non-status and Metis categories. It is fair to say that First Nations and Metis people have had little participation in, or influence over, creating the social policies that affect them, over the ongoing building of structures and systems under which they live, and have, instead, been controlled by government.

Undoubtedly, intentional oppressive acts such as those noted here, and others found in the *Indian Act* and elsewhere have done extensive damage to Aboriginal communities across Canada. (This and the preceding paragraph were taken from *A Structurational Analysis of Aboriginal Subordination in Canada*, an honours essay by Cora Sellers, department of sociology and social studies, University of Regina.)

> **A lot of our First Nations people, you know, they don't know basic things. They don't know their traditions. They don't know – they don't know the simple things like that, whereas the people, other people, other nations have retained that culture. Our culture, you know, was assimilated basically, you know, right down from the industrial schools to residential schools to – you know, right down to the justice system ... the whole system was set up basically to take the culture away from the people, and what better way than through our youth, through our children.** (Speaker, Saskatchewan Coalition Against Racism presentation)

Roundtable participants and many speakers in the community dialogues clearly stated that racism and discrimination are related to many problems including the high level of imprisonment of First Nations and Metis people in Saskatchewan.

> **There's no question that there is a social, cultural and historical dimension to this problem. Aboriginal people are alienated from the criminal justice system, which has a long history as a tool of colonization in Western Canada, and there's no question that there is a cultural gap between the majority of those who administer the criminal justice system and those who are offenders and victims.** (Speaker, Saskatchewan Justice and Corrections and Public Safety presentation)

The Canadian Race Relations Foundation discussed systemic racism and strongly suggested:

> **The Canadian government should immediately implement effective strategies – and when I say Canadian government, and other levels of government, so this is applicable to Saskatchewan – to immediately implement effective strategies and measures to address and prevent acts of violence against Aboriginal peoples, in particular**

Aboriginal women, by both police and civilians, in order to develop a comprehensive strategy to ensure the full documentation, investigation and resolution of any unsolved murders and deaths.

This Commission encourages organizations, businesses and governments to examine their own cultures, practices and policies to identify and correct any practices that represent or could lead to racism. Accountability for and evaluation of racist behaviour must be built into their systems. In addition education and training needs to be available to everyone about subtle systemic racism and how to eliminate it.

Antiracism community education starts with government-community dialogue about *systemic racism* and leads to grassroots projects that aim to break down barriers by increasing critical understanding of racism.

Race-Based Privilege

One theory is that ignorance is the cause of racism. If people had "the facts" they would change both their beliefs and their behaviour. This is too simple an explanation. In *Racial Healing*, Newkirk and Rutstein state, "We have found that it is actually more difficult for individuals to overcome the emotional attachment to the ignorance than to overcome the ignorance itself. Challenging one's belief system usually provokes resistance because there is a natural desire to protect what makes one feel comfortable and secure." They describe "a gradual process of chipping away" with "patient and unqualified love." While this is surely effective, this gradual process means that while we wait for the changes to occur, the imprisonment rates and other problems remain high.

No one wants to be considered a racist. Many of us think of ourselves as non-racist. To acknowledge our true feelings requires deep reflection. It is troubling to consider the possibility that no one is completely free from racism. At the Racism Roundtable, one participant noted that some of the nicest people she knows have racist tendencies.

Many people resist the idea that they may have biases or may cling to stereotypes. Yet, all may acquire certain biases as part of their "socialization package." Peggy McIntosh wrote an article, *White Privilege: Unpacking the Invisible Knapsack*, which deals with this socialization. A workshop of the same name states:

> **It is often easier for white people to look at the disadvantages of racism for people of colour than to recognize the advantages of racism for white people. Focusing only on the negative consequences of disadvantage and marginalization sometimes permits people to feel compassion or pity for others, without having to come to terms with or challenge feelings of one's own superiority.**
>
> **To turn things around, and assess how white people benefit from discrimination on a daily basis, often results in painful reactions, excessive guilt, or denial. In discussions of systemic discrimination that also focus on systemic advantage, some major participants find it especially hard**

> **to acknowledge the possibility that their individual achievements may not be based exclusively on their own individual merit, but also depend on the systemically structured advantages available to majority groups. This can create a situation of cognitive dissonance for participants, who have been socialized (as have most of us) to believe that Canadian society is tolerant and fair, and rewards individual excellence and hard work with material and social success.**

There are many examples of "white privilege," according to McIntosh: the ease of being able to shop without being followed or harassed; opening the front page of the paper and being able to see people of the white race widely represented; as white parents, being able to protect your children most of the time from people who don't like them; doing well in a challenging situation without being called a credit to the race; never having to speak for all white people; being assured of not being singled out because of racial overtones; being able to choose a bandage, doll or a greeting card that reflects the correct skin colour; taking a job with an affirmative action employer without having coworkers suspect that it was given unfairly because of race.

> **We need to help people move towards that and to recognizing that race is a social concept and that it's a way of keeping some people oppressed and others not. And that those who oppose equity programs, those who oppose changes to the system, are ones who want to preserve the status quo and their own group's power and privilege.**
> (Speaker, Canadian Race Relations Foundation presentation)

The University of Guelph's final report of The President's Task Force on Anti-Racism and Race Relations stated, "White privilege has never exempted white people from experiencing class prejudice, sexism, relatively low status, political oppression, religious discrimination, ethnic friction, poverty or discrimination on the basis of ability or sexual orientation. But it is essential to acknowledge that it has protected white people from humiliation and persecution based solely on their membership in the white race."

Facts on 'Privileges'

Racism is increased by lack of accurate information. Misinformation exists in Saskatchewan concerning the entitlements and other benefits that come with being a First Nations person. An opinion column by Doug Cuthand in the December 5, 2003 edition of the Saskatoon *StarPhoenix* on a report from the Centre for Research and Information on Canada said nearly two-thirds of Saskatchewan people believe it would be better to do away with Aboriginal Treaty rights and to treat Aboriginal people the same as other Canadians. The view seems to be that First Nations people enjoy "unearned privileges" not available to others. The article went on to say, "Without a proper understanding, this may create unfounded fear or discomfort so it really does point to a need for greater public education, more dialogue between First Nations and non-Aboriginal people."

> **The bottom line is education and as Canadian people, whether we're Native or non-Native, [we need] to understand what our history is. Where did we come from? Why did our peoples end up in the community together? What did they bring? And then we have an equal place to start exchanging.** (Speaker, Racism Roundtable)

a) The Treaties

Treaty and Aboriginal rights form part of the Supreme Law of Canada and are enshrined in the Constitution. According to the *Constitution Act, 1982*, Aboriginal people are defined as the "Indian, Inuit and Metis peoples of Canada." Unfortunately, there is very little public awareness of the Constitution and its implications, including Treaty entitlements.

The post-Confederation Treaty process began in the early 1870s and ran for the next 40 to 50 years, securing for Canada millions of acres of land to fill with mostly white settlers. The current value of this land is hundreds of billions of dollars. This does not include the value of a single drop of oil, a forest that has been harvested, one chunk of potash or any crops that have come from fertile soil. Many Canadians fail to see the value of the earnings on the land gained from First Nations and Metis people for so little as a result of the Treaties. Approximately one per cent of the land in Saskatchewan was given to reserves under Treaties. Settlers received access to farmland, security, and the peace and goodwill of First Nations."

More information can be
obtained from
The Office of the
Treaty Commissioner
1150-606 Spadina
Crescent East
Saskatoon, SK S7K 3H1
Phone (306) 244-2100
Fax (306) 244-4600
or at their website
www.otc.ca

> **The Treaties that were written, they're your Treaties too, from whatever direction you're coming from those Treaties are to make people get along with one another, to have respect for one another.** (Elder speaking at a dialogue with the Office of the Treaty Commissioner Elders on reforms to the justice system)

To distinguish the post-Confederation Treaties from earlier ones in the East, the western Treaties were given numbers rather than names and are referred to as "numbered Treaties." The "numbered Treaties" were signed between 1867 and 1923. For Saskatchewan, relevant Treaties are numbers 2, 4, 5, 6, 8 and 10. These Treaties helped establish Canadian sovereignty over the Northwest during a time of American expansion and opened the land for the railway and farming by immigrants. Doug Cuthand wrote in the StarPhoenix, December 5, 2003, that the real winner after the numbered Treaty negotiations was Canada:

> **It's not often understood, but all Canadian citizens have Treaty rights. When Canada acquired the land for the three Prairie provinces, it received a chunk of land larger than Western Europe. This new land was rich in farm land, minerals and gas and oil. In 2002, the three Prairie provinces had a combined gross domestic product of $223 billion. Now who got the best deal?**

Several ongoing projects address the obligations of Treaty. However, it will take at least a dozen years to resolve these, as Brent Cotter, Deputy Minister of Government Relations and Aboriginal Affairs states:

> **Many of you are familiar with this process by which the shortage of land that was not provided to a significant number of First Nations has been redressed in a framework agreement and then a series of individual agreements with First Nations to fulfill the land commitments from the treaties. In the course of a dozen years or so, as you can see, $500 million, in excess of that, [across Canada, 30 per cent of which is provincial money] has been made available to First Nations to fulfill that shortfall by the acquisition of land and, although there have been bumps along the road, we are making good progress in enabling First Nations to fulfill that shortfall and to be able to use this pool of money, both in land and in economic development terms, to strengthen their First Nations economies.**

b) Education

In the oral tradition of negotiating the post-Confederation Treaties, First Nations were promised, among other things, continuing education. Today this translates into funding for primary, secondary, and post-secondary education. However, there is a problem. The funding has been capped at two per cent annually while the population and demand for post-secondary education has increased sharply. This has resulted in more people sitting on waiting lists than are actually attending school. First Nations students are presently more likely to have to negotiate student loans, than they are to receive a "free ride" from their band.

c) Health Care

One of the basic responsibilities of the federal government is health care for First Nations people. This was negotiated in the post-Confederation Treaties. First Nations people with Treaty status do have some additional benefits, such as dental and eye care and limited counselling.

d) Justice

There is a misconception that Aboriginal people receive special consideration in sentencing. The Gladue decision, interpreting Section 718.2 of the *Criminal Code*, set a precedent that requires courts to consider social, economic and cultural background factors when sentencing Aboriginal offenders. Gladue takes into account the lasting effects of the residential school system and the resulting deterioration of family and culture that has led to so much dysfunction in the Aboriginal community.

e) Employment

A representative workforce concept encourages the consideration of equally qualified First Nations and Metis people, but also encourages the hiring of women, visible minorities and people with disabilities. The approach by Government Relations and Aboriginal Affairs is, "A representative workforce is one where Aboriginal workers are represented at all occupational levels (entry level, middle and senior management) in proportion to their numbers in the province's working age population. Although the primary goal of this strategy is to achieve a representative workforce, attaining that goal should not be considered a barrier to employment beyond proportional estimates. The achievement of a representative workforce requires changes in the workplace, improvements in the knowledge/skill attainment of potential Aboriginal workers, and a comprehensive and focused employment development strategy." It can inspire sensitivity to the needs of other groups, including First Nations and Metis people through day-to-day contact. The concept is of benefit to all employees regardless of superficial differences. It is also of benefit to Saskatchewan, as the demographics show a burgeoning population of young First Nations and Metis people at a time when there is an aging workforce about to retire.

Employment Equity – a program designed to remove systemic barriers to equality by identifying and eliminating discriminatory policies and practices, remedying the effects of past discrimination and ensuring appropriate representation of designated groups.

Employment equity means more than treating individuals in the same manner. It also requires special measures and the accommodation of differences. Thus, the quality of the results is important, not necessarily the equality of treatment.

f) The Myth of Taxation

"Aboriginal people do not pay taxes." is a belief commonly held. That could not be further from the truth. The right to not pay taxes is land-based. Any Treaty beneficiary living off-reserve and purchasing goods pays the following taxes: property, PST, GST, alcohol, tobacco, income, environment, duty, capital gains, payroll and fuel. Such people pay, in effect, what every other Canadian pays. On-reserve there are exceptions for income, tobacco, fuel, GST and PST. However, given the high unemployment rate on reserves in Saskatchewan, this exemption for income tax is an advantage to very few.

Except for *Indian Act* exemptions on-reserve, First Nations people and corporations do pay taxes. The reason for this exemption is that First Nations land is held "outside" Canada and hence out of Canada's tax jurisdiction. Freedom from taxation and, incidentally, military conscription were also Treaty promises. The taxation promise has been weakened by court interpretation (Benoit v. Canada); wrongly, in the opinion of many Aboriginal people.

> **Just talking about taxation ... this whole taxation thing came up one day because they're farm people, and one of them said to me, "Well, you're really lucky you don't have to pay taxes." Well, guess what, I probably pay more taxes in that community than anybody else because I have nobody at home with me ... When I talked to them about that they just assumed if you were Aboriginal you paid no taxes, period. They had no understanding, you know, that the people who don't pay taxes are such a small minority.**
> (Elder, Racism Roundtable)

g) Hunting and Fishing

In the Treaties, there were guarantees about the First Nations being able to preserve their way of life through hunting, fishing and trapping. The right to hunt and fish, basically, is limited to food gathering. It does not include commercial harvesting. The right to hunt and fish is set forth in the *Constitution Act, 1930* (the Natural Resources Transfer Agreement) and interpreted by R. v. Badger. The Act states:

> **In order to secure the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right to access.**

Commercial fishing and hunting activity is licensed and regulated. While the amount of Crown land is not dwindling, the demands on Crown land have increased in regards to mineral, oil and gas, forestry, roads and infrastructure. These increased demands in turn, affect hunting and fishing.

METIS PEOPLE

As noted by the Supreme Court of Canada (SCC) in the Powley decision: "The term Metis in s.35 [of the *Constitution Act*] does not encompass all individuals with mixed Indian and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their Indian or Inuit and European forebears." They have endured repression, including attendance at residential schools, the denial of land claim settlements and the marginalization of their culture, history and rights, according to C. Blackstock in the *National Children's Alliance Policy Paper on Aboriginal Children*.

Metis people do not have the same rights as First Nations people. Certainly the Metis faced, and still face, much the same racism and exclusion from mainstream society, as do First Nations people. For example, the Hudson's Bay Company ignored a Metis land claim registered in Manitoba in 1810, and gave the land to Lord Selkirk to populate with immigrants.

An effort by Metis to be independent and govern themselves was lost at the Red River Rebellion of 1870. As part of the later peacemaking, Section 31 of the *Manitoba Act* offered the children of the half-breed heads of families residing in the province at the time of transfer 1.4 million acres. A one-time grant of land or money, known as scrip came later. This was a certificate or voucher and in theory could be used only to acquire lands listed in a Dominion Lands Office as open for homesteading. Fraudulent practices were common. The result left the Metis landless, without a community and exempt from the *Indian Act*. The Metis became the "road allowance" people, forced to literally live on road allowances because they could not reside on reserves, could not afford land and were not accepted in towns. The Metis right and request for land in Saskatchewan has been recognized minimally.

> **We need governance ... we need to have our own laws ... that will conform with what our beliefs and our values are, not how somebody else expects us to live. Like we're not puppets, we know what we want and we need to get ahead, we want to be independent but we can only do that by getting a land base, by having an economic base and by giving us the freedoms. I don't believe we have any freedom as Aboriginal people.** (Speaker, Beauval Community Dialogue)

In the case of *Regina v. Powley*, the Supreme Court found that the Powleys, as Metis, had an existing Aboriginal right to hunt not only because they were members of a contemporary Metis community at Sault Ste. Marie, but also because they had ancestral connections to an historic Metis community. It existed at Sault Ste. Marie at the date when effective European or Canadian control was asserted over the area and whose members historically hunted for food in the area around Sault Ste. Marie to such an extent that this practice was considered to be an integral part of their distinctive culture.

> **Some of the suggestions and solutions that I would like to make are to provide proper resources to help settle issues such as the bombing range, the Metis land claims, the Metis war veterans. Government needs to make that commitment so that we can regain the trust and respect of governments and their agencies.** (Speaker, Beauval Community Dialogue)

Legally, First Nations, Metis and Inuit people have not been treated as equals by their fellow citizens, but as their inferiors, virtually since others began coming to the Americas. Some legal differences remain in place. Political differences have created hardships for the Metis organizations. A comment was made to the Commission about a lack of fair distribution of casino funds to the Metis Nation – Saskatchewan.

Simply treating everyone equally cannot solve the problems related with racism. Given the history of First Nations, Metis and Inuit people, treating people fairly and justly requires allowing for the differences. Steve McArthur, representing the Federation of Saskatchewan Indian Nations Health and Social Development Secretariat, saw it this way:

> **We are of the opinion that honourable, fair, respectful and equitable relationships are required for justice to prevail.**

The recent Powley decision, by the Supreme Court is an example of the promise of a better tomorrow and the patience and stamina of the nation to wait while courts reaffirm Metis rights to land and resources. (Submission, Metis Family & Community Justice Services Inc.)

Community Responsibility

Many times the Commission was pleased to hear people acknowledge the need for individuals to take responsibility for stopping racism and express their personal commitment to do so. At the same time, departments of the Saskatchewan government and other organizations recognized their responsibilities.

> **The issues of racism and the need to build trust between Aboriginal and non-Aboriginal peoples go beyond justice system staff or officials. There is a pressing need to promote trust, harmony and cooperation between all Aboriginal and non-Aboriginal peoples in the province. As a growing percentage of the provincial population is Aboriginal, relations between Aboriginal and non-Aboriginal peoples will become increasingly important to the health and strength of our communities and economy. While there is a role for justice officials to play in addressing this issue, it must become an issue of vital concern to all provincial citizens.** (Saskatchewan Justice and Corrections and Public Safety, 2004)

A speaker at the Racism Roundtable made the following recommendation:

> **We have to individually make a commitment that we will stop racism where we see it in our daily lives, whether it's a family member, a relative, a friend, an acquaintance, a co-worker. If somebody says something that's off-colour or crosses the line, it's inappropriate, it's racist, we have to stand up and say, "that's not acceptable, it's not appropriate and you cannot be saying those kinds of things." We all have to make a personal commitment to stop it wherever we see it.** (Speaker, Racism Roundtable)

The Economic Costs of Racism

The economic costs of racism are tied to the whole social system. They can be seen in the justice system through the high numbers of First Nations and Metis people who are imprisoned. This is covered in Chapter 9 - Aboriginal Justice in Saskatchewan 2002 – 2021: The Benefits of Change.

Education System and Racism

Racism can be a factor in driving Metis and First Nations youth out of the schools and, consequently, out of the job market. As a result, the potential contribution these youth might make to the Saskatchewan economy is lost. With no education there is usually lost work opportunity. A poor job yields little in income taxes. Such earners often become a cost since they may need welfare or may enter the criminal justice system – both high costs for the taxpayer.

A speaker at the Business/Economic Development Roundtable wanted a strong message to go to youth:

> **Learning leads to earning. A job at the end of schooling would be the payoff. Go in and tell them, "Don't drop your high school sciences and your maths and all these things but when you do that these are the jobs you're eliminated from." We have to go in the schools and we have to go early and teach them all these things about culture and when we talk about keeping them in high school so that they can get meaningful jobs, not just entry-level jobs or jobs in the area of Aboriginal trouble, social work and all these ... [but] supervisory, middle management, senior management. Not just union jobs, you know, we promote all of it.**

Currently, the province has 8.8 per cent equity employment with a goal of 12 per cent of the workforce being Aboriginal. Also noted was that of the 8.8 per cent, "94 per cent of those people have a job that can't feed a family: part time, temporary and casual." (Presenter, Aboriginal Employment Development Program, at Business Roundtable)

According to a report from the Saskatchewan Institute of Public Policy (2004), "Education is important for the cognitive and social development of a child. A high level of education can make a big difference in a child's life in terms of economic stability and social inclusion in the future. Conversely, the lack of education contributes to a detachment from the labour force and, usually, dependency on the welfare system."

> **And I was in Grade 4 ... Whenever somebody talked about an Indian, whenever our teacher brought up an Indian topic or we were studying Indians, they would all look at me, and I was like, "Oh, my God." And I was so humiliated ... Another incident happened with my teacher, we were all in class and every time we did an exam and I didn't know how to divide, I'd leave that out because I just didn't know how to divide and I was too shy to ask anybody, ask my teacher for help. Which is typical, Indian people not wanting to ask for help, but I didn't. So what he made me do, he'd write this question on the board and he'd call me up in front of everybody and I had to go up to the board and do this question. I had no idea how to do it. So he'd leave the classroom and all these other kids would be saying, "Dummy, you're stupid." You know, saying all these horrible things ... not once did he show me up there how to do it ... I'm 37 years old and I have that fear of numbers.** (Speaker, Saskatchewan Native Theatre Dialogue)

According to the final report from the Minister's National Working Group on Education entitled *Our Children – Keepers of the Sacred Knowledge*:

> **Systemic racism, racist remarks and racist attitudes have a profound affect on academic success. They may also contribute to a lack of parental support for students to stay in school. Whatever the impact, too many First Nations students are exposed to racism in different forms**

You can access the report *Our Children – Keepers of the Sacred Knowledge* at http://www.ainc-inac.gc.ca/ps/edu/finre/ouchi_e.pdf

> **throughout their elementary, secondary and post-secondary school experiences. Teachers who hold low expectations for First Nations students are possibly the most pervasive example of racism that many students encounter.**

The report stated further, "a multi-purpose strategy on racism can assist students to deal with racism, to equip teachers, administrators and support staff with tools to reduce racism, and to encourage school boards to address racism directly in the curricula and school policies." The Commission certainly supports this.

First Nations and Metis Content in the Classroom

> **Now, today, just like the Eagle Feather one of the Elders used to use, there's two-way education in that school where I'm working. One side is the white man's education and the other side is Indian culture. If you learn those two educations your education will be balanced.** (Elder, speaking at a dialogue with the Office of the Treaty Commissioner Elders on reforms to the justice system)

In 1999 the Aboriginal Education Provincial Advisory Committee produced its action plan for the years 2000 to 2005. The committee is working towards improving the learning environment for First Nations and Metis students. The goal is to include First Nations and Metis content and perspective in each area of study in every classroom in Saskatchewan. In nine of its seventeen recommendations, the committee dealt with providing accurate and relevant First Nations and Metis content. (Warren, 2004)

This Commission suggests other areas the committee could consider:

- Collaboration at the policy level of all education authorities to promote mandatory First Nations and Metis studies, so that all students have access to this education.

- Development of programs and resources to support teachers wishing to invite First Nations and Metis resource people into their classrooms.

- Development of a transparent, accountable method to monitor and measure the success of including First Nations and Metis content.

Teaching Treaties in the Classroom

The Commission attended a workshop hosted by the Office of the Treaty Commissioner (OTC) entitled Treaties As a Bridge to the Future. At that time, *Teaching Treaties in the Classroom* was announced. This Commission soundly supports the project.

Since then, Saskatchewan's Office of the Treaty Commissioner has been singled out in a new United Nations report as an example of using innovative, community-based educational programming to fight racism. The UN report advocates adopting – on an urgent basis – an intellectual strategy against racism with tools like the OTC 'educational initiatives'. "Intellectual strategy" refers to promoting improved understanding between Canada's various cultural and ethnic communities. According to the UN Commission on Human Rights, there needs to be a dual strategy implemented to combat racism and discrimination in the long-term. This strategy should include two components:

> **an intellectual and ethical strategy targeting the fundamental cultural, ethical and mental roots of the culture and mindset of discrimination, through the promotion of a cultural pluralism that is based on the contrasting notions of unity and diversity, i.e., one that, while respecting characteristic identities, cultures and spiritual traditions, also strives for unity by promoting interaction and cross-fertilization between the various communities;** (Diene 2004)

As of April 2004, the "Teaching Treaties in the Classroom" kit was distributed to 80 per cent of all schools across Saskatchewan and 2,600 teachers have experienced "in-service" training. The objective is to provide the kit to every school in Saskatchewan by 2004.

The Commission approached Saskatchewan Learning on the possibility of implementing *Teaching Treaties in the Classroom* to the primary grades throughout Saskatchewan. Craig Dotson, Deputy Minister, Saskatchewan Learning, responded in a letter as follows:

> *Teaching Treaties in the Classroom* **is an important initiative and Saskatchewan Learning is pleased to support this work in partnership with the FSIN and the OTC as it is consistent with the government's interest in providing a broad public communication strategy in Aboriginal education and learning supports for all students. We believe that the instructional materials prepared by the OTC will deepen student pride and understanding of the role of treaties in building Canada. Its implementation is proceeding well.**
>
> **The OTC's mandate will expire on March 31, 2005. Future expansion of the Teaching Treaties in the Classroom initiative will depend upon further extension of the OTC mandate.**

The Commission recommends in Chapter One that the OTC's mandate be continued.

Equity Plan for Schools

The Saskatchewan Human Rights Commission recommends that every school division with an Aboriginal student enrollment of five per cent or more have an equity plan in place.

"This equity program is on a voluntary basis only ... It believes all school divisions benefit from equity plans, whether or not they have large numbers of Aboriginal students, and continues to promote the adoption of plans."

The Saskatchewan Human Rights Commission noted, "17 school divisions with over 79,000 students have education equity plans in place. In addition, Regina Public School Division has an approved employment equity plan, enabling them to hire Aboriginal teachers preferentially. This then brings the total number of K-12 students affected by equity plans to over 100,000."

The Saskatchewan Human Rights Commission requests school divisions with approved plans to supply brief, annual reports. Continued approval of equity plans is dependent on these reports. The Saskatchewan Human Rights Commission is adding an equity section to its main website and plans to post all the reports.

Training for Teachers

> **In 2002, the Aboriginal Education Unit, Saskatchewan Learning, was expanded to include three additional staff who play a strong role in providing professional development to teachers across the province. The professional development provided encompasses Aboriginal awareness (culture and history), incorporating Aboriginal content and perspectives across the curriculum, creating learning environments that support Aboriginal students' learning at the school and school division level and Native Studies curriculum implementation. A comprehensive professional development strategy is under development that will encompass pre-service and in-service professional development in relationship to Aboriginal education. Teacher training institutions, boards of education and provincial education partners and Aboriginal organizations will be key partners in the strategy.** (Personal communication, Craig Dotson, Deputy Minister, Saskatchewan Learning, January 12, 2004)

In 2003, at least 50 professional development workshops were delivered to pre-service and in-service teachers.

> **We need to share our lifestyles, our values. They need to know why a feather is important to us, why the Sweetgrass is important, why the Ceremony, and the Sweats, the Round**

> **Dances, they're happening all over. We need to invite our white brothers and sisters to come to those and to take time to explain.** (Speaker, North Battleford, Community Dialogue)

Aboriginal Teacher Education Programs (TEP)

The Saskatchewan Teacher Education Programs (TEPs) provide role models and reduce cultural barriers for Aboriginal youth in Saskatchewan. The programs also serve the wider goal of education equity in the K-12 system by increasing the proportion of First Nations and Metis teachers. Since the inception of the TEPs, which includes the Northern Teacher Education Program in La Ronge; the Saskatchewan Urban Native Teacher Education Program in Regina, Saskatoon and Prince Albert; the Indian Teacher Education Program at the University of Saskatchewan; and the First Nations University of Canada teacher education program, close to 2,000 teachers have graduated with a Bachelor of Education degree.

Significant advances have been made by local boards of education in hiring First Nations and Metis teachers from the Saskatchewan Indian Federated College, the Gabriel Dumont Institute and the two universities.

> **While Saskatchewan has far to go to ensure an equitable teaching force in provincial schools, the trend is improving. In school divisions that have equity programs in 1989-90, 4.1 per cent of teachers were Aboriginal. In 2000-01, 6.4 per cent of teachers were Aboriginal. Aboriginal students represented 15.7 per cent and 20.2 per cent of the total student population in these divisions for the two corresponding years. With respect to the entire student population of these divisions, representation improved from one Aboriginal teacher for every 456 students in 1989-90 to one Aboriginal teacher for every 239 students in 2000-01.** (Craig Dotson, Deputy Minister, Saskatchewan Learning, January 12, 2004)

The challenge faced by schools requires teachers to respect differences, have a willingness to learn and teach about other cultures, and promote respect and belief in individuality and "oneness." A sincere, accurate and thorough understanding of the history and cultures of First Nations and Metis people needs to begin in the early grades. Many initiatives undertaken now will soon be reflected in the achievements of policy makers or members of the business community.

EMPLOYMENT ISSUES

A common recommendation of previous reports and commissions referencing First Nations and Metis people and racism is to increase the number of Aboriginal people in justice and other areas. This can lead to greater understanding of the needs of First Nations and Metis people and to acceptance. It also leads to a more representative work force. It can give First Nations and Metis people the

opportunity to influence changes to policies and structures that affect them. There are a growing number of young people who are about to reach employable age. Increasing the numbers in important jobs today will encourage First Nations and Metis people to fill these jobs in the future. People have to see themselves reflected in the system to feel like they are welcome in it and have the right to belong. Internal policies must be in place to prevent racism. In recent years, many organizations have developed such policies.

At the Business/Economic Roundtable, Saskatchewan Government Relations and Aboriginal Affairs (GRAA) said that 47,000 First Nations and Metis people will come of age and enter the workforce in the next seven years. Through partnerships developed with the Aboriginal Employment Development Program (AEDP), a program of the Aboriginal Affairs division of GRAA, barriers that limit or discourage First Nations and Metis participation in the workplace are identified. Once they are identified they can be removed to improve access for First Nations and Metis people as well as non-Aboriginal Canadians.

AEDP promotes the need to stay in school to obtain a permanent job. It promotes a workforce strategy defined as, "Aboriginal workers being represented at all occupational levels in proportion to their numbers in the province's population." To assist AEDP, the province initiates contact with schools and talks to the youth. They are told "we need the skills to pay the bills when we get older."

At the Business/Economic Roundtable, AEDP representative Wayne McKenzie said he believed the quota system should be removed and workplaces should hire on the basis of merit.

> **As an Aboriginal person and as a Canadian, I can't have 100 per cent access to the opportunities of this province ... Why is it that you get 100 per cent access and I get a quota? What happened?**
>
> **In each of our workplaces the people will know that we got there, not because you lowered the standards, it's because we got good information from you, we went out and got the necessary skills. When the vacancy came, we competed and won the competition.**

Equal Opportunity Programs are made up of policies, guidelines and actions to remove discrimination and ensure equity and full participation in education and employment, health care and housing, as well as the services, goods and facilities available to the general community.

This message is inconsistent with employment equity, but it was qualified. The view is that a need exists to open up the hiring for all jobs at all levels and, at the same time, ensure programming is in place for youth to assist them with getting the education they need for employment.

The director of one government department was frustrated at not being able to designate a position, which required working with Aboriginal people, as one to be filled by an Aboriginal person because, nationally, his organization had met its quota. That quota did not account for the higher percentage of Aboriginal people in the Prairies.

More than one speaker at dialogues and roundtables felt unions are a roadblock to the participation of First Nations and Metis persons seeking employment. The most common concern was that unions protect their mainly non-Aboriginal membership, even when they display racist attitudes or a poor work ethic, and by doing so limit the opportunities for others to get in. For example, internal job postings rather than external competitions prevent those outside the union being able to compete for jobs for which they are qualified. The Aboriginal Government Employees Network felt that the small numbers of First Nations and Metis members within unions limit their ability to make changes to policy and agreements. Instead, issues of the non-Aboriginal majority received attention. For example, because of the aging workforce, many are concerned with pensions. Concerns such as this override those of the First Nations and Metis employees.

It is worth noting that AEDP now involves unions in signing partnership agreements – these are called tripartite agreements, wherein the employer, the union or unions in the workplae, and GRAA, agree to work towards the same goals that will support the hiring and retention of First Nations and Metis people in the workplace.

At the Business/Economic Roundtable it was suggested that there be union-management-Aboriginal agreements in place so First Nations and Metis people can get jobs in unionized workplaces and come to understand collective agreement rights. A union member said,

> **Our union is working hard at ensuring that we have representative language so that they can get the meaningful jobs. We have to go out and tell them to get the education so they can get those jobs. Everyone is a stakeholder no matter what your background is.**

The FSIN in 1997 challenged the organized labour movement to become more active on Aboriginal issues:

> **In particular, in terms of employment opportunities and training, we would like to see a specific body established from the main unions in the Province of Saskatchewan with the Federation of Saskatchewan Indian Nations to discuss how we can better work together at all levels ... We need to identify the barriers to First Nation participation in the union movement and mechanisms so Aboriginal people gain entry to the skilled trades, which are mostly unionized in Saskatchewan.**

Entities like the FSIN Corporate Circles of Saskatchewan are taking a proactive role in assisting businesses in Saskatchewan to eliminate barriers to hiring and training First Nations and Metis people. It is a collaborative approach to employment and development between the Saskatchewan Indian Institute of Technologies (SIIT) and Metis Employment and Training of Saskatchewan Inc. (METSI).

Organizations interested in participating in making the Corporate Circles of Saskatchewan into a productive strategy can contact Myrna LaPlante at (306) 477-9217 or laplantem@siit.sk.ca or Gabe Lafond at (306) 668-7671 or glafond@metsi.sk.ca

> **[The Corporate Circle] is a place where Saskatchewan business leaders, presidents, Chief Executive Officers can meet with FSIN Chiefs on a regular basis to discuss new and innovative ways to provide increased economic, employment and educational opportunities for First Nations people.**

The agenda includes:

- Entry level employment opportunities.
- Mid to high level employment opportunities.
- Training opportunities for employees new to the workforce.
- Training opportunities for employees with experience in other sectors of the work force.
- Investment opportunities in existing businesses.
- Investment opportunities, with a partner, in new businesses.
- Opportunities for Aboriginal business to become suppliers to new and existing companies.

Frustration with racism around employment issues is reflected in this quote:

> **And like the jobs, like where I used to work in a big company, it was a mean company. We went through so many natives in like one month than we did with white people in maybe like five years. Aboriginal people were like bugged, taunted, teased, everything that you could think of, like, at the workplace, but they'd do it like behind closed doors where people couldn't see.** (Speaker, Saskatchewan Native Theatre Dialogue)

Recruitment must include a means of identifying potential employees who harbour racist attitudes. A report from the Metis Family & Community Justice Inc. suggests a need for "assessment tools that will be used to monitor and screen out … employees who exhibit racial intolerance."

BENEFITS OF RECREATION AND CULTURE

> **We have a rec program now that we just got funded for … our kids are now getting involved in other sports that they can play with other kids in the community.** (Speaker, Prince Albert Youth Activity Centre Dialogue)

The Commission heard from Saskatchewan Culture, Youth and Recreation about the benefits of recreation, sports, art and culture in reducing racism and building understanding among diverse cultures.

> **Westland (1991) found in a review of the literature on leisure and mental health that "virtually all play situations provide ample testimony to the fact that once the game starts, social distinctions disappear and the 'status' of the participants is determined by their ability to play the game."** (Speaker, Saskatchewan Culture, Youth and Recreation presentation)

In its report, *"The Impact of Culture/Arts, Sport and Recreation on Antisocial Behaviour in Youth: Evidence and Analysis,"* Saskatchewan Culture, Youth and Recreation stated:

> **Providing support and guidance to youth is not only to their benefit, but benefits the entire community. Finding opportunities to help youth develop strong social skills allows them to grow into productive, fulfilled adults.**
>
> **Through community-based culture/arts, sports and recreational activities youth are provided an opportunity to build positive relationships helping to reduce antisocial behaviour. Youth involved in antisocial behaviour likely have low self-esteem and little self-confidence. By participating in recreational activities, youth can increase both their self-esteem and self-confidence and gain, in addition, a sense of accomplishment.**

The Impact of Culture/Arts, Sport and Recreation on Antisocial Behaviour in Youth: Evidence and Analysis can be obtained from http://www.cyr.gov.sk.ca/assets/pdfs/CYR-Impact0on-behaviour-research.pdf

SASKATCHEWAN'S MULTICULTURALISM POLICY AND RACISM

In 1989 *"Multiculturalism in Saskatchewan, The Report of the Task Force on Multiculturalism"* was presented to the Ministers' Committee on Multiculturalism. Unfortunately, at the time it received little attention although it contained some excellent recommendations, including some related to First Nations and Metis people. Dr. Karen Mock, in her presentation for the Canadian Race Relations Foundation, urged the Commission to consider this report. The Commission found the recommendations still relevant and deserving support. Among other things, the report suggested:

- 6.1 that the multicultural policy of Saskatchewan recognize the Aboriginal peoples as the original multicultural society in this province.
- 6.2 that government departments and agencies consult with the Aboriginal community when developing programs that will affect this community.

Multiculturalism is a federal policy in Canada and is used to describe the composition of Canada both historically and currently. It is an ideology that holds that cultural, linguistic, racial and religious diversity is a beneficial, integral and necessary part of Canadian society and identity.

Multicultural Education is designed to create and enhance understanding of and respect for cultural diversity.

- 6.4 that the Department of Education [now Saskatchewan Learning] provide adequate financial and human resources for the development and production of materials suitable for use in northern schools.

- 6.5 that the Aboriginal community be encouraged to promote a positive image of its people by documenting and disseminating information on its successes and contribution to the development of Saskatchewan.

- 9.1 that the Government of Saskatchewan recognize the importance of meaningful employment to all individuals and vigorously support employment enhancing programs.

- 10.1 that multicultural components be integrated into training programs for media personnel.

- 14.1 that provincial and local governments ensure that the multicultural diversity within their jurisdiction be reflected in their appointments to boards, commissions and committees.

Five years later, in 1994, the Saskatchewan government developed a race and cultural relations policy. It states, in part, "For Indian and Metis peoples, the government is committed to preventing and overcoming identified inequities and barriers based on racial and cultural differences." This policy recognizes that, "all citizens of the province should understand and appreciate the history, culture and status of Indian and Metis peoples. A promotional and educational approach should be taken to develop understanding of and appreciation for Indian and Metis cultures." Elsewhere the policy stated, "Preventive measures to avoid racial and cultural conflicts are important." Despite the existence of the race and cultural relations policy and the work of the Committee on Multiculturalism, however, racism remains prevalent.

Recommendation 7.1
This Commission endorses the report *Multiculturalism in Saskatchewan: Report to Ministers' Committee on Multiculturalism.* **This Commission recommends that the Executive Director of Saskatchewan Culture and Heritage report, in writing, to the Implementation Commissioner, and shall clearly indicate progress made in carrying through the recommendations put forward in this Multiculturalism report.**

CULTURAL AWARENESS TRAINING PROGRAMS

The term cross-cultural training is familiar to most people even though it, generally, is "one-way" rather than "cross." It often perpetuates thinking that suggests that discrimination and prejudice is one way, from non-Aboriginal to Aboriginal. It is not. Acts of discrimination and prejudice exist from Aboriginal to non-Aboriginal people, between First Nations and Metis, between persons with Treaty and those who have obtained Treaty rights through Bill C-31.

On June 28, 1985, Parliament passed Bill C-31, an *Act to Amend the Indian Act*. Indian women who had lost status as a result of marrying a non-Aboriginal man were allowed to regain status.

Political juggling and power struggles to gain the upperhand result in hypocrisy and blocking of actions and programs that could eliminate racism.

Cross-cultural training most often focuses on giving participants accurate information on the history of First Nations and Metis people in Canada along with some cultural practices. It has also been an aid to increased sensitivity to the needs of First Nations and Metis people. On the other hand, these sessions often leave out addressing the mentality of racism.

Of cross-cultural and race relations sensitivity training, Judge Patricia Linn, chair of the Saskatchewan Indian Justice Review Committee, said in her 1992 report:

> **When we speak of cross cultural training we do not mean a day or two of classroom lectures during an employee's initial job training followed by occasional "workshops" in later years ... We envision cross cultural training to be ongoing throughout the service of an employee, and include a strong Aboriginal component to familiarize participants with both the history and the contemporary situation of Saskatchewan Indian and Metis peoples. Also, cross cultural and race relations training must include an evaluation component to determine whether the training has had an impact.**

The submission from the Metis Family & Community Justice Services Inc. argued there needs to be a more inclusive worldview of the background and realities of the Metis people.

> **What is required is more than merely understanding our history; rather it is about who we are today, where we came from and where we are going. This process has to engage both Aboriginal and non-Aboriginal people from every cross section of society; coming together committed to exploring and breaking down the barriers created by racism.**

This Commission agrees.

Oneness and Hope

The Commission agrees with both comments but believes that training to eliminate racism must go further. Because racism is a learned belief and an acquired attitude, more needs to be done to improve race relations by promoting the unity or "oneness" of human kind as a part of the core learning process. A common statement by Elders in the community is that one must listen, "not only with our ears but with our heart."

According to an address by Mary Robinson, United Nations High Commissioner for Human Rights, "We are all members of one human family and inequalities in enjoyment of the most basic human rights are not only wrong in themselves, they are a major cause of social upheaval and conflict."

We all have to come together in order to be able to survive. Children at a very early age need to have an understanding of how it is that we are all part of the human family. One idea proposed to the Commission at the Racism Roundtable for reducing racism and other unhealthy attitudes and beliefs is to remove the word "racism" and change it to "oneness." The concept of "oneness" should not perpetuate the denial of racism but ensure we reach the goal of equality and equity.

Another concept given to the Commission is "hope." An act of hope according to Dr. Ronna Jevne is:

> **To hope is to search. To hope is to notice the gaps between where we are and where we want to be, and to ask of ourselves, "How might the futures we face be more hopeful?"**

The Commission believes that concepts of oneness and hope need to be incorporated into future training, with the goal of assisting people to closely exam their own racist attitudes and replace them with acceptance and mutual respect.

Coordinated Approach to Cultural Training

In Saskatchewan many cross-cultural and race-relations training packages are delivered by numerous individuals and organizations with varying qualifications and experiences. This is an improvement on the situation a few decades ago when this kind of education was extremely rare. The Commission believes, however, that experienced educators could accomplish more if a coordinated approach were adopted. Moreover, a problem with well-intentioned in-service training needs to be addressed.

> **What happens in policing or in corrections or in the judiciary? They won't use outside proper experts in racism and anti-racism. You know, they will say, "Karen, can you teach us what you do in a couple of days?" And they want to go do their own thing. Police training police. I said, "Well, could I learn in a few days how to be a police officer?" They don't see the kind of work that we do as defined as professional expertise.**
> (Speaker, Canadian Race Relations Foundation presentation)

Network – A group of people with common interests sharing information.

A standard for excellence needs to be developed by training experts to determine what should go into quality training packages. At a minimum, a network should be established among trainers to exchange information and resources.

One source of information on the development of professional standards can be found in the paper, *Race Relations Training in Canada, Towards the Development of Professional Standards, (Mock & Laufer, 2001)* It reviews the area of guidelines and standards and indicates there are strong views both for and against regulation.

> **Should there be a body responsible for professional standards? Then where does the mandate come from and how is it implemented in terms of ensuring standards are maintained … There needs … to be a more organized and strategic plan to**

> develop, train and create greater awareness and sensitivity to the issues of racism within the general public. Standards are necessary in terms of input and process and outcome, to ensure that trainers are competent, but together with that we need programs and leadership at a macro level.

The Commission believes that a network to distribute First Nations and Metis cultural awareness would benefit everyone, as the makeup of this province's workforce will be changing significantly in the next few years. The network would ensure that proper and effective cultural awareness training is delivered to clients throughout Saskatchewan.

> As we look to the future in our province, we realize there will be a significant impact on the labour force as the booming young Aboriginal population starts to take its rightful place in the workforce. Unfortunately there are many misconceptions around Aboriginal issues that lead to resentment, racism and alienation, leading to low retention levels of Aboriginal employees. Therefore it is vital to inform the people of Saskatchewan about the real or true facts surrounding Treaties and the way that Aboriginal people fit into the Constitution of Canada. (Submission by John Lagimodiere)

Recommendation 7.2

This Commission recommends that the governments of Canada and Saskatchewan, specifically Indian and Northern Affairs Canada and Saskatchewan Government Relations and Aboriginal Affairs, in consultation with representatives from the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan:

a) create a directory for Saskatchewan of First Nations and Metis people who are recognized and respected as trainers/facilitators on cultural awareness and the promotion of healthy relationships between the First Nations and Metis cultures and the non-Aboriginal population; and

b) that the directory be made available to organizations, government departments, and members of the justice system wishing to provide cultural awareness training to their employees; and

c) that the list be reviewed and updated on an annual basis.

Understanding and attitudinal change can take place if learning opportunities are present and acceptable. This is especially true if the learning is to be presented in a respectful way, is based on historical fact and stresses the building of healthy relationships. All justice personnel, as well as others, must be educated so they can replace negative or racist views and feelings with positive ones.

Nevertheless, the most excellent training on antiracism can be blocked if it never goes beyond making a minimal impact. Training programs must have adequate resources and be incorporated into the culture of organizations and governments.

MEDIA PORTRAYAL OF RACE

The Commission often heard concern about negative portrayal of First Nations and Metis people by print and electronic media. At the same time the Commission was aware of positive efforts being made. The formation of the Aboriginal Peoples Television Network (APTN) is one. There are also public service announcements on radio and television and in print that spotlight achievements of First Nations and Metis people in our province. Nevertheless, there are accounts of criminal activities, substance abuse and other aspects, which create a poor image of First Nations and Metis people. This can influence their treatment negatively both in the justice system and among members of non-Aboriginal society.

Dr. Ronna Jevne mentions the role media play in justice:

> **The media plays a hefty role in making hope, hopelessness, justice and injustice visible to the community. We are fed crime and punishment in 45 second clips. The offences of the majority of offenders are not newsworthy and we are left to generalize from the minority who receive media coverage about the larger population of offenders. We are often not informed of the contextual/cultural information. The counterbalance is that on occasion, it is the media that brings injustices, including social injustices, to the foreground.**

A speaker at a dialogue in the Rainbow Youth Centre in Regina stated that young people must be portrayed more positively as there seems to be fear among older people of youth. He said:

> **It doesn't matter who the youth are, they're afraid of them because the media has made them out to be these bad people.**

The Federation of Saskatchewan Indian Nations stated:

> **Media has a responsibility to put together a proper picture in a lot of these atrocities. I think they have a responsibility. When the Elder talks about what we have to do together, media needs to do their work also. They don't necessarily have to paint a black picture of what developments occur to First Nations people, First Nations leaders, but I think they have a responsibility to tell the story the way it is. A case in point, we had a serial killer in our community here, John Martin Crawford. Sure, the media did their job, but not good enough. We hear stories about Clifford Olsen and Paul Bernardo, but John Martin Crawford doesn't reach that level of notoriety ... and why is that? Complacency, or it is,**

> **"Just Another Indian." So journalists, you have a job to do too, to help us in actually bringing about realities that exist in First Nations areas.** (Speaker, Federation of Saskatchewan Indian Nations presentation)

Muriel Stanley Venne, representing the Institute for the Advancement of Aboriginal Women, discussed systemic discrimination against Aboriginal women in the justice system and in society. Venne referred to information put forward by Constance Deiter-Buffalo that in December 1995 the RCMP said 470 Aboriginal women were reported missing. Venne felt the number of missing Aboriginal women was exceptionally high, and that there was a lack of effort by police to locate them due to their First Nations ancestry.

How the Saskatoon case of Darrell Night was presented in the media in early 2000 was also seen as a problem, and possibly racist. It was not until Night's allegations about police misconduct that media interest in the deaths of two other Aboriginal men, Lawrence Wegner and Rodney Naistus, was aroused, argue researchers Connie L. Braun and Storm Lee Sanders. They found bias in the reporting:

> **In at least six articles, the suspended officers are presented in a favourable light. They are depicted as "veteran officers" with a clean record of service in the community. Several articles characterize their behaviour since their suspension as forthright, truthful (willing to participate in polygraph testing), and cooperative. In addition, a sympathetic portrayal is evident in the officer's appeal hearing regarding their pay while suspended.**

Although a handful of published articles highlight positive characteristics of Wegner, Naistus and Night, Braun and Sanders found that many more stories contained unfavourable images, which led to further victimization of the men and their families in the media:

> **There are approximately 34 articles that portray the victims and Aboriginal peoples in a negative and/or derogatory manner ... In the first articles that reported the case, "drugs," "drug use," and "drug activity" are referred to 17 times as indicative of the victims' lifestyle. This gratuitous use of negative language dominates the new coverage and blurs the factual components of the case.** (Braun & Sanders, 2001)

A speaker at the Racism Roundtable gave a positive view of the media:

> **Anyway, there was an article by a reporter, a really good one. She questioned everything in that whole situation. I thought, wow, how did you get it through your bosses, why did they even print this? She's obviously new. I hadn't seen her name before. Anyway, she questioned what really took**

> **place that night ... what motivated it, whether it really was such a beating, all of those things. The stuff that we all question when we see an article like that.**
>
> **Just because it's not bad news, doesn't mean it's not news.**
> (Speaker, Saskatchewan Youth in Care and Custody Network)

It is fair to say that the media have to make a profit and it seems the public is willing to buy more papers if stories are sensational. Nevertheless, steps have been taken by the media to address issues of racism. The Canadian Radio-television and Telecommunications Commission supports this.

To find out more about the Cultural Diversity Task Force go to its website at www.cab-acr.ca/english/culturaldiversity/default.shtm

> **The Commission will expect all conventional television licensees (at licensing or licence renewal), to make specific commitments to initiatives designed to ensure that they contribute to a system that more accurately reflects the presence of cultural and racial minorities and Aboriginal peoples in the communities they serve. Licensees are expected to ensure that the on-screen portrayal of all minority groups is accurate, fair and non-stereotypical.**

A task force has been created with representatives from the broadcasting industry and community groups. It will examine ways to improve the representation of Canada's cultural diversity on television.

Eagle Feather News
410 Avenue N South
Saskatoon, SK S7M 2N4
Phone (306) 978-8118
Fax (306) 978-8117

This Commission, however, believes that the media in Saskatchewan could play a more positive role in combatting racism and benefit from publishing the First Nations and Metis perspective more often. It is also felt that the media could benefit from feedback from First Nations and Metis communities. The Commission also encourages the First Nations and Metis communities to continue to promote a positive image of their people by documenting and disseminating successes and contributions to the province such as that provided by Eagle Feather News.

Recommendation 7.3

This Commission recommends that media outlets in Saskatchewan create an external community editorial board, including First Nations and Metis representatives, to review stories in the media and provide feedback to the producers and editors of stories on the portrayal of First Nations and Metis people.

EXAMPLES OF CURRENT RESPONSES TO RACISM

Donna Scott, Chief Commissioner for the Saskatchewan Human Rights Commission, said in their 2002-2003 annual report:

> **The condition of First Nations and Metis peoples has become arguably one of the most pressing human rights issues in our province. The increased urbanization of**

Aboriginal peoples has resulted in widespread discrimination against them in the areas of public services, housing, education, justice and employment.

It has developed a handbook, The Rights Path, which spells out human rights issues for urban Aboriginal people such as:

- Children's Rights.
- Education Rights.
- Family Rights.
- Employment Rights.
- Social Assistance Rights.
- Housing Rights.
- Health Care Rights.
- Criminal Justice Rights.
- Seniors' Rights.

Other efforts to remove racism from society are:

- The Federation of Saskatchewan Indian Nations and the Canadian government established the Office of the Treaty Commissioner (OTC) in 1989. The OTC indicated that as of September 2003, its Speakers Bureau has talked to almost 28,000 Saskatchewan residents. It also has developed a curriculum on the history of the Treaties with a training program for teachers.
- The Institute for the Healing of Racism is a program that allows participants to grow by learning from each other about racism in a non-threatening environment.
- Community schools offer cultural supports and learning opportunities. Currently there are 98 community schools throughout the province funded by Saskatchewan Learning.
- The Aboriginal Elders and Community Workers in Schools Program supports and endorses Elder knowledge and traditional teachings within the school program.
- Native Studies 10, 20 and 30 curricula are established social sciences subjects offered in Saskatchewan schools.
- The National Parole Board, Prairie Region, conducts Elder-assisted parole hearings and also holds community-assisted hearings in First Nation and Metis communities.

More information on *The Rights Path* can be requested from the Saskatchewan Human Rights Commission offices
Saskatoon –
1-800-667-9249
Regina – 1-800-667-8577

You can contact the Institute for the Healing of Racism at:
http://www.bcca.org/rel/race_unity

Weyerhaeuser's program Planting Dreams makes a donation for each seedling planted to support community school programs, with special emphasis on pre-kindergarten initiatives.

- All federal prisons and most provincial correctional centres offer cultural programming with the help of Elders.

- The Nutana Collegiate Circle Helpers training project holds weekly talking circles to teach students the protocol for working with Elders.

- The Wanuskewin Heritage Park exhibits Aboriginal life in a positive light and is a testament to what can be accomplished when community and government work together.

- The Saskatchewan Coalition Against Racism is to be praised for its efforts in confronting racism in this province. This group exists on a shoestring budget and the passion of committed volunteers. It performs advocacy work on behalf of individuals and families facing racism.

- Working, Living & Playing Together is a project sponsored by SaskSport to eliminate racism in sport and recreation. The message from this committee is one of inclusiveness and full, non-discriminatory participation with boards, leaders and athletes.

More information on Working, Living & Playing Together can be found at http://www.Ersr.org/html_site/index2.html

SASKATCHEWAN'S CENTENNIAL 2005

> **As Saskatchewan nears 2005, the 100th anniversary of its entry into Confederation, it faces significant challenges. These include future labour shortages and fears of deepening divisions between Aboriginal and non-Aboriginal residents.** (Scott, 2003)

The Commission agrees with Chief Commissioner Donna Scott that Saskatchewan's centennial is an opportunity to promote cultural awareness with the people of the province, which would highlight anti-racism and healthy relationship activities.

Saskatchewan has set the following goals for its centennial:

- Improve links between and among diverse communities in the province to increase understanding and integration.

- Provide the people of Saskatchewan with opportunities to focus on the future while acknowledging the past.

- Increase the pride of Saskatchewan's people in their province to increase:
  - Investment in the province
  - Recruitment of new business and new residents to the province
  - Retention of business and residents in the province

- Provide the people of Saskatchewan with a legacy from the centennial year.

A solution to racism proposed by the Metis Family & Community Justice Services Inc.:

> **Part of the solution to stop racism is not only to recognize racism in Saskatchewan but to embrace it with all its problems. Only then will it be transformed into a situation that can be changed. This transformation needs to come from both Aboriginal and non-Aboriginal people. An interchange of ideas on our differences and similarities needs to occur. Community forums that bring together a broad cross-section of society to speak openly about race relations, experiences and realities of all its members, help address the gap in information. This will add to cultural awareness and allow us to embrace our community mosaic. Another solution could include an interchange between communities through work placements and secondments within schools.**

Saskatchewan Centennial 2005 Grant Programs

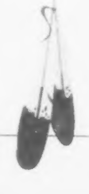
In April 2003, the Saskatchewan government launched a number of Saskatchewan centennial grant programs, funded through the Community Initiative Fund (CIF). The fund helps communities and organizations develop and support centennial projects and put in place community services focused on vulnerable children, youth and families. Two centennial grant programs are:

- CIF Celebrating Community Centennial Grant Program – funds are available to support unique projects which create new, lasting, bonds among people from diverse communities.
- CIF Aboriginal Participation Initiative – composed of programs for Aboriginal people in the North, and in urban communities, as well as funds for province-wide initiatives. The Aboriginal Participation Initiative contains preventive sport, culture and recreation programs and services for Aboriginal children and youth.

Guidelines and application forms for Saskatchewan Centennial 2005 grant programs can be found at www.saskatchewancentennial.com

Recommendation 7.4

This Commission recommends that the Department of Culture, Youth and Recreation take a lead role and work with other relevant government departments, agencies and non-governmental organizations, along with representation from the First Nations and Metis communities, to coordinate and host an anti-racism conference to coincide with March 21, 2005, the annual day on which Saskatchewan supports the Elimination of Racism and the centenary of Saskatchewan. This conference should be offered by videoconference, wherever possible, to ensure northern communities can participate.



Recommendation 7.5
This Commission recommends that the Saskatchewan Association of Rural Municipalities and Saskatchewan Urban Municipalities Association jointly, along with representatives from the Government of Saskatchewan, Federation of Saskatchewan Indian Nations, and Metis Nation – Saskatchewan, establish a committee to coordinate anti-racism activities in the year 2005.

Some additional measures the centennial office could include in its campaign are:

- Public service announcements depicting the unity and harmony of humankind, the difference between rude and acceptable behaviour, and myth-breaking around so-called First Nations and Metis privileges.
- Essay writing and poster making contests for youth on oneness, hope and anti-racism.
- Raising the profile of proactive First Nations and Metis members of the business and academic communities including front line justice/health workers.
- Promote activities between communities that celebrate culture, history and diversity.
- Co-sponsor conferences on issues like housing, policing, poverty, education, recreation and racism to build networks and community consensus on major issues.
- Thought provoking press releases and editorial briefings promoting International Day for the Elimination of Racism, National Aboriginal Day, Black History Month, Louis Riel Day and local Treaty days.
- Advertising and extending invitations to all citizens of Saskatchewan to First Nations and Metis celebrations.

Recommendation 7.6

This Commission recommends that the Government of Saskatchewan design and implement a media campaign which includes the use of public service announcements as much as possible, by September 2005, with the assistance of First Nations and Metis people, to achieve the objectives below:

- **Provide all citizens of Saskatchewan an opportunity to reflect on the contributions of First Nations and Metis peoples over the last 100 years of this province's development;**
- **Establish a broad-based understanding of how to build and maintain constructive and positive relationships among First Nations, Metis and non-Aboriginal people; and**
- **Assist individuals and communities to identify and eliminate inequities and barriers based on racial and cultural differences.**

This public education strategy must go beyond 2005 and must include an evaluation component.

Xenophobia is the fear or hatred of strangers, people from other countries or of anything that is strange or foreign.

In addition to celebrating the past, the future of Saskatchewan must be considered. Increasing the number of immigrants to Saskatchewan is a result of a significant campaign by the provincial government. With the different nationalities arriving, the centennial is an opportunity to educate people about xenophobia.

In a document by the International Labour Office of the United Nations, *International Migration, Racism, Discrimination and Xenophobia*, countries were encouraged to put in place a plan of action. Such plan should promote respect for diversity and multiculturalism and combat negative stereotypes and misinformation regarding those from other lands. The Commission feels this matter should be included in the education campaign for Saskatchewan's centennial and beyond.

To minimize cost, secondments from the provincial and federal governments, the Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan could be assigned to work with a coordinator on a three to five year program to extend the work of the strategy. Funding for cost incentive projects and programs might be secured from government programs and from the business community in the form of cash or in-kind donations.

CONCLUSION

In all its forms, racism is heavy-handed and high-handed. It involves compulsion, harassment and coercion. It hounds and torments. It has led to genocide, environmental destruction, slavery and theft. It causes anguish and anxiety in its victims. Racism is harsh, ruthless and merciless. Whether individuals or an entire people, the oppressed are weighed down physically and depressed mentally. Racism is unjust.

According to the submission by the Metis Family & Community Justice Services Inc., recognizing racism and taking responsibility for it is key to beginning the healing of First Nations and Metis people and the justice system in Saskatchewan. The report further stated that allegations of racism must be validated. To ignore them would be an injustice to all community members who have told stories of racism to the Commission.

To create healthy relationships with everyone, regardless of ancestry, Canadian citizens must commit to eliminating racism. Many commissions, including this one, have identified racism as the critical cancer that must be removed if the relationship between the justice system and First Nations and Metis people is to be rebuilt.

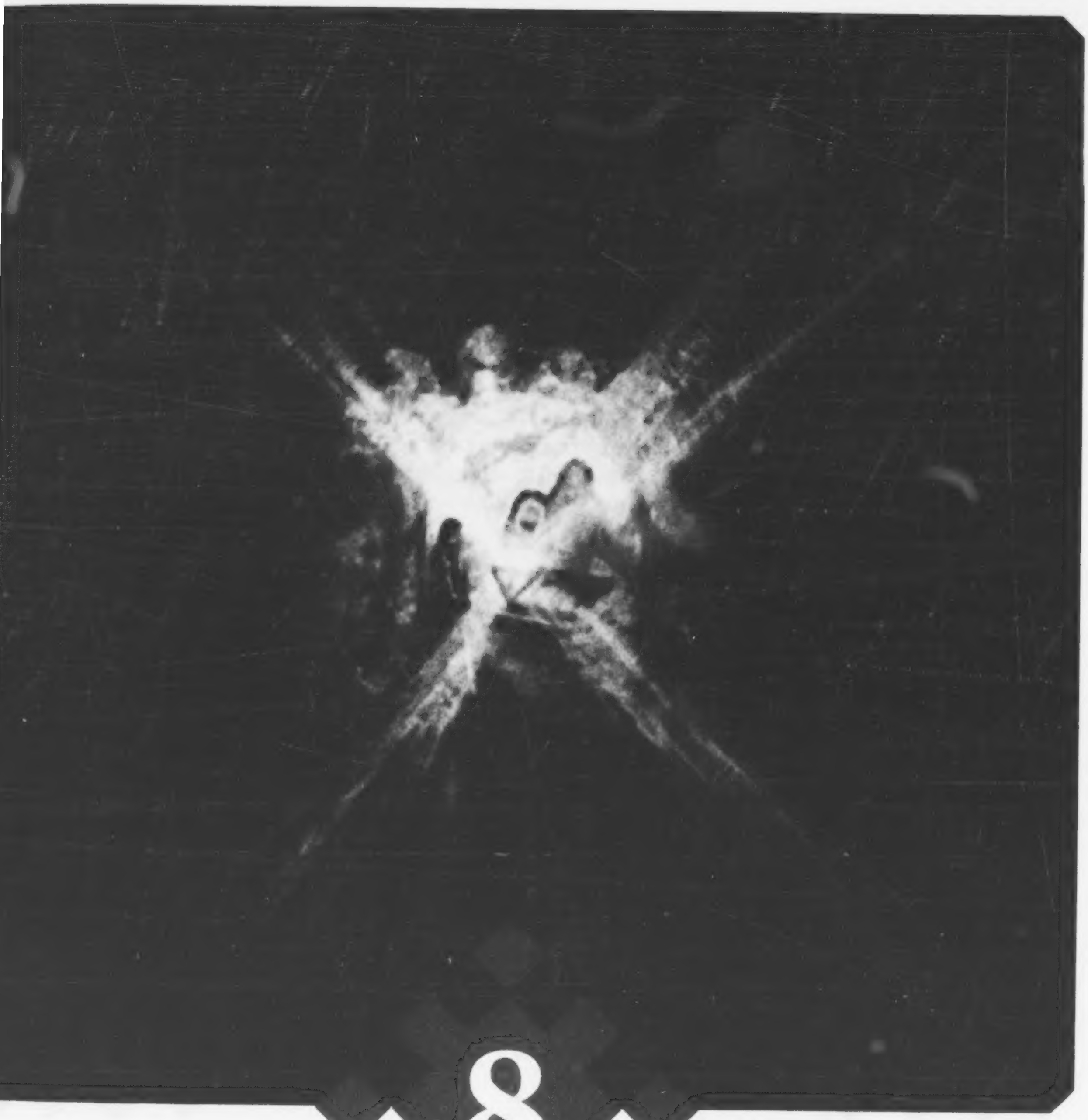
To create healthy relationships with others of different ancestry, racism must be understood as a monster to be attacked, reduced and, ideally, eliminated. Altering societal attitudes takes, at minimum, a generation. It is an ongoing task. Men and women, young and old, who have helped, over time, to make this changing path of life a little easier, must be praised. Compared to some years ago, one cannot help but acknowledge the greater acceptance of First Nations and Metis people and their cultures by the mainstream and governments. Because lives continue to be lost to the justice system, we cannot be complacent.

Coordinated action, shared goals and objectives, and a variety of innovative tools and strategies are needed to make this province a world leader in the creation of safe, healthy, just and prosperous communities. Given a sincere desire to leave a *Legacy of Hope* for the future, especially for the children and youth, it is not enough to simply state it once. The *Legacy* must be renewed from time to time to continue the progress.

> **It is important to speak out against racist acts or comments. Each of us has an important role to play in this struggle [against racism]. The keys to eliminating racism are education, courage and action. I encourage you to think about this pressing problem and to become part of the solution we should all be seeking.** (*Racism: Speak Out To Stop It*, a handout by CAW)

We must find ways to lift each other up — *"opintowin."*

Recommendation 7.7
This Commission recommends that every person, and especially those in leadership positions, make a commitment to eliminate racism where it is present in day-to-day life.



8

CHILDREN AND YOUTH:

REALIZING POTENTIAL

CHILDREN AND YOUTH: REALIZING POTENTIAL

INTRODUCTION

> **Children are a special gift of the Creator. An individual child is not owned by the parents – but borrowed for a time to be in the physical world and live as an integral part of creation. A new child has been given many "gifts" by the Creator. These are interpreted differently by Aboriginal nations – but they are generally known as humility, respect, compassion, courage, truth, wisdom and love. These gifts provide guidance and strength to the child. How these gifts affect a child's life will depend on the nurturing received in the child's home and community. A stable loving and caring home will bring out these special attributes in the child. In turn, the child will help to make a future for his or her community.** (Van Bibber, 1997)

The Grand Chief of the Assembly of First Nations, Phil Fontaine, spoke of the ability of First Nations to care for their children as critical to future prosperity. No issue is more fundamental than care of children. He challenged all levels of government to work with First Nations to create change. Chief Fontaine also challenged everyone to take every opportunity to lift our young people up, to celebrate the successes and provide them with hope for the future. (Address to National Therapeutic Care Conference, Saskatoon, Nov. 2003.)

First Nations and Metis children and youth are fully aware of their circumstances. They are bombarded with negative images and statistics. They are subjected to racism. Many know the impact living in poverty with families in crisis has on their nutrition, their school attendance, their involvement in sports and cultural activities, and their general well-being.

Children in this report refers to those under 12. **Youth** refers to those under 18.

These children and youth do not need to hear about barriers to success but rather of their future potential. It is up to those that lead and govern to ensure that opportunities are provided. In spite of barriers in their path, many First Nations and Metis youth excel. Their resilience and success often go unrecognized.

Let us celebrate the successes of our children and youth. The following is one young person's story that provides an example of the capacity of youth to surpass barriers.

> It has been a long hard road trying to rebuild my life and put together the pieces that were broken. I was in the sex trade as a teenager, went through abuse, trauma, loneliness, addiction and fear. I had so much fear and believed that I wasn't worth living.

I wanted to leave the streets because I was getting sick of the abuse that I had to endure each day. I wanted to change my life but I didn't know how to start rebuilding my life or who I can talk to about my problems. I had so much fear and shame that it was hard to quit using drugs and leave my street life, friends and family.

One day I decided that I was going back to school, start attending NA and AA meetings to try to sober myself up. It was hard to try to stay clean without going back to the street life and to adjust to new changes in my life. I was trying my best to do everything on my own but it didn't work.

Sometimes I would return back to the drugs and working, but one day I saw that my younger sister was affected by seeing me work all the time and told me to stop because it was drawing her to the street life. I knew that I had to change my lifestyle and try to quit everything that was destroying my life. I didn't have much support from my family and didn't know where to find help in the community. So I went back to high school and tried my best to stay in school but it was very hard. I didn't have much understanding from people and they didn't understand what I was going through (depression, panic attacks, nightmares, stress, cravings, etc.).

I wanted to find inner peace and a way to live a sober and clean lifestyle. I wanted to find a way to love myself and gain respect for myself as well. Slowly my life started to change and each day got easier. I was learning to trust the world again. I was raising myself to be an adult and didn't have much guidance from anyone except my sister. I started to forgive the people who used me and hurt me in the past. I learned how to go on with my life even when it came to people who didn't support me.

I was really weak but I learned how to be strong and even when it came to people who would put me down and call me names. One day I was counting people in my life that really cared and loved me. It was only six people including myself that I knew cared about me. So I told myself that "I can love myself" even though I didn't have many friends or support from anyone else.

Soon the positive changes in my life started to take me places. I started to have more friends that were nice and started to feel more comfortable with the new world I was living in. I had to learn how to love myself and try to fill in the big lonely void in my life. I think what helped me the most was having hope and believing that there was something that was taking care of me. (Youth's story published in *Exit Routes*)

The Commission's vision is a society in which all children and youth feel they belong and are heard, where they are valued and included. The ideal society places the needs of children and youth first and provides opportunity for their contribution in decisions being made about them. The challenge for all levels of government is to build safe and secure communities for First Nations and Metis children and youth.

BACKGROUND

Saskatchewan's youth population is the highest and the youngest, proportionately, in Canada.

- First Nations and Metis people represent 13.3 per cent of the total population in Saskatchewan. The median age of the First Nations and Metis population in Saskatchewan is 20.1, meaning that half are under the age of 20.1 years compared with 38.8 years as the median age for non-Aboriginal people in Saskatchewan. (See Chapter 9 - Aboriginal Justice in Saskatchewan 2002-2021: The Benefits of Change).

- The Prince Albert Grand Council reports 59 per cent of its population is under 25. (Annual Report, 2003)

- In the provincial constituencies of Athabasca and Cumberland the percentage of children and youth under the age of 20 is 49 per cent and 46 per cent, respectively. (Government of Saskatchewan)

- In La Loche, of the 1,400 band members living on the Clearwater River Dene Nation, 70 per cent are under the age of 18.

This population is the foundation for future policy development.

Increased Imprisonment of First Nation and Metis Youth

As the population of First Nations and Metis children and youth increases, so does their numbers appearing before the courts. Saskatchewan has the highest provincial rate of cases brought before youth court in Canada and the highest provincial youth incarceration rate. (Saskatchewan Justice and Corrections and Public Safety, April 2004)

The rate of youths charged in Saskatchewan is more than double the Canadian rate. (Statistics Canada, 2004)

> **As a nation, Canadians treat our troubled and troubling children with harshness that adults throughout the Western world would find extreme and unnecessary. Yet we tell ourselves that we are among the most lenient.** (McCrae, 2000).

For some time there has been a zero tolerance policy toward adolescent antisocial behaviour. This policy resulted in the criminalization of youth. Society can adopt different responses to youth behaviour. First Nations and Metis youths' antisocial

The Past 10 Years

1. Increased population of First Nations and Metis children and youth.
2. Increased imprisonment of First Nations and Metis youth.
3. Increase of First Nations children and youth in the child welfare system.
4. Unacceptable level of First Nations and Metis children living in poverty.
5. Increased alcohol and substance abuse by youth.
6. Increased physical and sexual violence.
7. Increased school dropout rate.
8. Increased youth unemployment.

In April 2002, there were 342 youth in custody; in April 2003 there were 260, a decrease of 21 per cent. (Corrections & Public Safety, January 2004) behaviour can be assessed by their community, based on their own traditions – the traditions of healing and restoring harmony. If the community is given the power and authority to create its own responses, youth will be transformed into responsible members. Communities, Elders, and youth themselves want to be held accountable by those that know them and their circumstances.

The *Youth Criminal Justice Act* came into effect on April 1, 2003. The Commission remains optimistic about the potential of the *Youth Criminal Justice Act* to be a mechanism for returning justice to communities. Since the enactment of the *Youth Criminal Justice Act*, there has been a drop in the number of youth being brought before youth court and in the number sentenced to young offender facilities. The young offender facilities are currently operating at approximately two-thirds capacity. There has been a reduction in the number of youth in both open and secure custody facilities. There has been no reduction in the number of youth remanded to custody awaiting trial. It is important to find out the reasons for this.

Recommendation 8.1

This Commission recommends that the Government of Saskatchewan initiate a study to determine the reasons for the high number of First Nations and Metis youth remanded to custody followed by a strategy to reduce these numbers by March 31, 2005.

Saskatchewan reported a wide use of alternative measures before the *Youth Criminal Justice Act* came into effect and their use remains high. The Commission was told that alternative measures do not explain the decrease in custody numbers. If the *Youth Criminal Justice Act* is to deliver on its potential, and these youth are to fulfil their potential, they must receive the community interventions to deal with their multiple needs. Funds must be diverted from the criminal justice system, corrections in particular, to community-based programs to ensure justice is returned to, and sustained in, the community.

The Commission heard there simply are not enough resources to deal with the needs of offenders affected by fetal alcohol spectrum disorders (FASD). Her Honour M.E. Turpel-Lafond wrote:

> **The stark reality is that without community resources and support for M.B. and others in his circumstances, the fall back will be to use custodial facilities in substitution for therapeutic supports. The YCJA implores us to consider special needs (s.3) and to investigate the reasons and background circumstances behind offending behaviour. Here, we have a very good sense of the underlying causes of M.B.'s behaviour: his FASD and traumatic background. Yet, there is nothing to offer him and the expectation that he change first before something can be offered. When things do not work out for him, even when little supports are provided, we then attribute full responsibility to this youth. Is he failing society's expectation or are we failing him by expecting too much in light of his FASD diagnosis?**
> (*R. v. M.B.*#2, [2003] SKPC 133)

A previous chapter (Chapter 2) discusses fetal alcohol spectrum disorders and recommends a strategy of education, prevention, assessment, intervention and lifelong services. A further comprehensive study on FASD is in Volume 2 entitled *Fetal Alcohol Spectrum Disorders and the Justice System* by Rae Mitten.

The Commission believes mental health services available to children and youth in Saskatchewan are inadequate. According to Saskatchewan Health, mental health services in the province treat 4,500 children and adolescents annually or approximately two per cent of the population. A British Columbia study by Waddell & Shepherd in 2002 estimated the mental disorders among children and youth to be about 15 per cent. Saskatchewan has a higher than average population of young First Nations and Metis, who have special needs due to conditions in which they live, as well as, in many cases, suffering from the effects of prenatal exposure to alcohol and from other mental disorders.

In April 2004, the Children's Advocate released a report *It's Time for a Plan for Children's Mental Health* that addressed the lack of mental health services to children and youth in Saskatchewan.

A copy of this report can be obtained from http://www.saskcao.ca/adult/links_and_publications_sub2.html

Recommendation 8.2
This Commission recommends that the Government of Saskatchewan develop a mental health services plan to prevent and treat mental disorders among children and youth not involved in the youth justice system.

Female young offenders present special challenges. However, little is known about female youth offenders, according to Carrado, Odgers & Cohen in the *Canadian Journal of Criminology and Criminal Justice*. Less is known about First Nations and Metis female youth in conflict with the law. Female offenders often come from "homes of severe family dysfunction, the victim of both physical and sexual abuse, and is an extremely high drug user."

> **Young women residing in poverty-ridden and violent communities face the greatest challenges of growing up optimally. Structural inequity and institutional racism impede girls of marginalized backgrounds from obtaining quality educations and employment, accessing resources, and developing positive life choices. Lack of opportunity increases despair and the possibility of engaging in self-destructive delinquent activities; this is true especially for girls who reside in communities where crime and gang violence are prevalent.** (National Crime Prevention Strategy, 1995b)

Evidence shows many family factors predict future antisocial behaviour. According to Farrington & Coid in *Early Prevention of Adult Antisocial Behaviour*, these are: criminal parents; inconsistent or abusive parents; cold or rejecting parents; poor parental supervision; little parental involvement; separation or divorce and parental conflict, and the socioeconomic factors previously

discussed. The Ontario Child Health Study reported that the major factors that prevent bad conduct are: getting along well with others, good academic performance and taking part in organized activities.

> **We have to heal the family as a unit not just the child. But the thing is if they come back to a home that is broken, a home that is hurting, a home that is dysfunctional, that child hasn't got a whole lot of hope unless they have got some other programs that they can fall back on that they can have to help them grow.** (Speaker, MN-S Eastern Region Community Dialogue)

Prevention strategies that focus on early intervention, education, recreation and strengthening children, families and community will assist in returning justice to the community. Communities must be given the responsibility, authority and resources to deal with youth in conflict with the law.

Information on the Children's Advocate office can be found at http://www.saskcao.ca

Increase of First Nation and Metis Children and Youth in the Child Welfare System

First Nations and Metis children are significantly over-represented in the child welfare system. According to the 2002 annual report of the Children's Advocate, Saskatchewan had an increase in the number of children in care over the previous five years. On March 31, 1999, there were 3,030 children in care in Saskatchewan and another 179 were provided services by 10 First Nations Child and Family Services agencies. As of March 31, 2003, there were 3,303 children in the care of Social Services (now Community Resources and Employment) and another 1,089 provided services by one of 76 First Nations Child and Family Services agencies. While this increase is significant, it must be noted that during this same period, the number of First Nations Child and Family Services agencies providing services on reserves also increased. The need to bring children into care must be reversed if we are to reduce the number of youth entering the youth justice system. Strategies for preventing the cycle from continuing are provided in Chapter 2.

Reversing this trend should not mean that those children and youth in need of protection be denied the safety to which they are entitled. The need to ensure children are safe is, in the long term, the ability of a family to care for children in a safe community. Children's safety must always come first but the benefits of belonging to a family and community can not be overlooked.

Concerns were raised about children and youth in the child welfare system. The Saskatchewan Youth in Care and Custody Network is a support group for these youth, and presented the following recommendations to the Commission to improve services to children and youth in care:

> **a) Have "nine to five" social workers look at the schedule and be available for different hours of the day [a sentiment also expressed by numerous youth activity centres].**

b) Keep the line of communication open between schools, departments and workers; otherwise, use advocates.

c) Consistency is important for a positive youth worker-youth relationship. Do not transfer files to different workers. Do not move youth to different places unless absolutely necessary.

There may always be children who need to be placed outside of their homes. These children are the most vulnerable. They must be heard and their care must be planned and safe. This Commission is recommending the establishment of a Children's Advocate for Canada's First Nations and Metis children to ensure awareness of rights and responsibilities and the services to which they are entitled. (See recommendation 8.8.)

An example of returning justice to the community as well as respecting Aboriginal culture and traditions was shown in a Family Court decision by Madam Justice M.E. Wright (*J.D. (Re)*, [2003] SKQB 309).

Justice Wright adopted *Opikinawasowin* as a means of dealing with child protection. An Opikinawasowin requires the family, the extended family and others from the community to appear before a council of Elders who are regarded as the "guardians of society's history and the repository of its collective wisdom." (Jackson, 1992)

Opikinawasowin is a Cree word, which means "the lifting up of the children" or "holding the children in high esteem," and is the name given by a Metis Elder and pipe carrier to a more traditional and culturally sensitive form of dispute resolution.

Justice Wright ordered that "information pertaining to the protection of these children is to be presented for alternative dispute resolution at an Opikinawasowin, in a manner respectful of Aboriginal custom and tradition." Saskatchewan Justice was ordered to "arrange for three traditional Elders from across the province to form a council of Elders that will preside over the Opikinawasowin."

Justice Wright found that this traditional concept of justice has the potential to deal with child protection problems in a way that is more responsive to the needs of First Nation and Metis families appearing in Family Court. It is also more effective and legitimate, she felt. Opikinawasowin blends traditional culture while complying with legislation and is in the best interests of the child.

Unacceptable Level of First Nations and Metis Children Living in Poverty

The United Nations Human Development Index compares the quality of life in countries across the world. Canada tops the list. The index combines three factors – per capita income, educational levels and life expectancy. In 1998, Indian Affairs applied Indian-specific statistics to the index and found that among 173 countries ranked in the 1994 UN report, off-reserve Registered Indians came in about 35th and on-reserve Registered Indians about 63rd. Further, when broken down by province, Saskatchewan's on-reserve Registered Indians ranked lowest. This is unacceptable. (Anderssen, 1998)

The Convention on the Rights of the Child was adopted by the General Assembly in 1989. It came into force in the following year. More information about it can be found at http://www.sen.parl.gc.ca/lpearson/index-e.html

Campaign 2000, an organization that issues annual report cards on the state of child poverty in Canada, reports that in 2000 a striking 41 per cent of Aboriginal children lived in poverty, compared to a national average rate of 19 per cent for all Canadian children. (Campaign 2000, 2003 Report Card). This situation was an improvement over 1994 when 52 per cent of Aboriginal children and 23 per cent of all Canadian children were classified as living in poverty (Campaign 2000, 2000 Report Card). It is also contrary to Article 27 of the Convention on the Rights of the Child (CRC). (See Appendix 12.)

> **Poverty is linked to lack of educational attainment, poor housing, substance abuse, lack of resources, and often broken homes. Many youth also fall into crime when they cannot afford to give their families the basics of life. They can steal for food, clothes, and even their rent money.** (Speaker, Southern Plains Region Metis Development Corporation presentation)

The Saskatchewan Institute of Public Policy in *Profile of Aboriginal Children in Regina: Prospects and Challenges* says:

> **Poverty is, by and large, the most serious problem for Aboriginal families and their children. It affects not only the economic but also the social and physical well-being of children and youth.**

Poverty contributes to many social problems including child mistreatment. Saskatchewan has reduced the number of children living in poverty. However, many families depending on financial assistance continue to live below the poverty line, according to the Community-University Institute for Social Research. (2003) Poverty leads to poor nutrition, which impairs children's health and learning capacity. Poverty also results in poor housing and limits participation in sport, culture and recreation. Poverty hinders a child's development.

Saskatchewan's teen birthrate for 15 to 19 year olds is the highest of the provinces and double the national average. Teen pregnancy increases the chance that mother and child will live in poverty, decreases the chance the mother will finish high school, and increases the chance that the mother will need social assistance.

You can obtain more information on UNICEF and this report at www.unicef.org

A 2003 UNICEF report by Challifoux & Johnson says that lack of education among females leaves them "unable to contribute to positive change for themselves, their children or their communities." The report says that educating females reduces poverty and other health related concerns.

> **Aboriginal children are also significantly more likely to be members of a lone-parent family than non-Aboriginal children. In 1996, 32 per cent of Aboriginal children under 15 years of age lived in a lone-parent family, twice the rate**

> **in the non-Aboriginal population (16 per cent). In fact, in western cities like Winnipeg, Regina and Saskatoon, close to half of all Aboriginal children lived with a single parent.** (Canadian Centre for Justice Statistics, 2001a)

So that young mothers can focus on education there is an immediate need for governments to provide parenting supports such as skill development and childcare. As well, increases in assistance payments to youthful parents and their children are needed.

Increased Alcohol and Substance Abuse by Youth

Throughout the dialogues the principal problem named by children and youth was alcohol. They were asked, "What would make a difference in your life?" They usually answered with negative comments about alcohol and the damage it is causing. They spoke of being neglected, abused, and being denied a healthy and safe life, all because of alcohol abuse.

> **Like at 11 years old there's these people that had just got out of jail who were in their late 20s, early 30s and as young as their early 20s, feeding me hootch and feeding me alcohol until the point where I got so messed up I didn't even know which way was which, and then I don't even remember how the night ended ... And to look back on it and to think that's seriously seriously seriously wrong.** (Speaker, Street Culture Kidz Project Inc. Community Dialogue)

The Senate Standing Committee on Aboriginal Peoples reported that high levels of alcohol and substance use by youth influence their sexual practices and result in a high incidence of teen pregnancy. Many young women are giving birth to children affected with fetal alcohol spectrum disorders. There is also a rise in the number of cases of HIV/AIDS in those under the age of 30. First Nations and Metis people are over-represented. It is necessary to continue to educate First Nations and Metis youth about safe sex and the dangers of alcohol and substance abuse.

> **In 2001 there were 40 new diagnosis of HIV within the province, and 35 per cent of those cases were First Nations or Metis people. And over the last five years, of the new cases that have been identified, 46 per cent, on average, have been Aboriginal people.** (Speaker, Saskatchewan Health presentation)

Alcohol and substance addiction among Saskatchewan youth aged 12-19 is double the national average, according to Saskatchewan Health. The Commission was told that services do exist; however, youth and those who assist them said that these services are not accessible. Accessible means available in a timely fashion, with no waiting list and in a youth's community where family can be involved. Services must also be respectful of culture. Alcohol and substance

abuse is an urgent issue facing youth and their communities in the North. Many communities especially in the North requested addictions treatment centres in the form of healing lodges and camps.

One youth spoke of being released from hospital following a drug overdose and being told she would be placed on a waiting list for an appointment with an addictions worker or could wait in the addictions office and hope for a cancellation. She did not wait and wound up back in hospital.

> **If you are going to consider an action plan for change, you do have to address the problems of alcohol and drug abuse. It is a rapidly growing problem.** (Presentation to the Standing Senate Committee on Aboriginal Peoples, 2003)

The Senate Standing Committee on Aboriginal Peoples in 2003 said that the Regina Native Youth Treatment Centre was a best practice situation. The centre "provides long-term, 24-hour residential programming for Aboriginal youth in conflict between the ages of 11 years and 15 years ... There is spiritual and cultural input surrounding a strong educational and recreational component."

Poundmaker's Adolescent Treatment Centre can be reached toll free at 1-866-645-1888.

Poundmaker's Adolescent Treatment Centre, St. Paul's Alberta, is another model for a comprehensive treatment program. It contains the following elements to change the lives of addicted young people:

- **Stopping drug consumption.**
- **Detoxifying clients from the addictive subculture by changing behaviour, thoughts and values.**
- **Socially integrating them into their families and communities.**
- **Dealing with their physical and mental health.**
- **Developing plans to prevent a relapse.**

In addition to addictions, there is a need to address parenting and domestic violence issues. (See Chapter 2 and Chapter 3.) The Commission recommends the development of community initiated and based lodges which include Elders and traditional healing that deal with whole families in addressing addictions, domestic violence and parenting issues.

There is an urgent need for more treatment resources specifically for youth. However, the answer to addiction requires not only prevention and treatment, but also strengthening the community.

Increased Physical and Sexual Violence

Addictions often result in family violence, which then poses a threat to the well-being, development and health of young people.

Youth are more likely to be victimized and to become involved in criminal activity than any other age group in society. "In 1998, more than 52 per cent of the victims of youth crime were youth themselves," according to Prevention Magazine, Winter 2000 Edition. Victims tend to be other young people living in the same communities, attending the same schools. Offenders have, in many cases, been victimized in childhood. They often begin to victimize others, as they grow older. Chances of such individuals committing acts of violence are high, according to Elliott Currie in *Crime and Punishment in America.*

According to Statistics Canada, the odds of youth 15-24 being victims of violent crime are 9 times greater than those 55 and over.

The Saskatchewan government in 1997 developed a plan to deal with the number of children in the sex trade. It focused on deterring offenders, healing victims, providing outreach to children and youth, and addressing the causes of the problem. A public information campaign was launched, and outreach and monitoring systems developed. A law enforcement policy was established, aimed at pimps and others who exploit children. This recognized that children are victims rather than offenders.

In March 2002 a comprehensive plan was aimed at eliminating exploitation of children and youth in the sex trade. It provided support and healing to victimized children and youth. A new law, the *Protection for Victims of Child Sexual Abuse and Exploitation Act,* offers new tools to protect children from sexual abuse and exploitation.

While the situation has improved, children and youth remain in the sex trade. More must be done to correct this.

Increased School Dropout Rate

In 2001, Aboriginal youth represented 22 per cent of school age children and 27.4 per cent of the pre-school population of Saskatchewan. By 2016, it is expected that 50 per cent of children entering the school system will be Aboriginal. (Saskatchewan Learning, 2003) It is important that these children and youth be kept in school. This will require building new relationships between schools and First Nations and Metis children, their families, their communities and their leadership, to create an environment that is caring and respectful.

In *Education in Canada: Raising the Standard,* Statistics Canada reports that between 1996 and 2001 the number of Aboriginal youth reaching this level increased from 21 to 23 per cent in Canada. Approximately 50 per cent of self-declared Aboriginal students who reach Grade 10 go on to complete Grade 12. The comparable rate for all students in Grade 10 who go on to complete Grade 12 is closer to 80 per cent, according to Saskatchewan Learning (2003).

During the Commission dialogues, police and others referred to the dropout population as the most "at risk" of engaging in criminal behaviour. An unknown number of First Nations and Metis children are not attending school. Many are youth who have disengaged from the mainstream school system at an early age. The School^{Plus} report refers to these children and youth as "hidden youth." The Saskatchewan government has agreed to tackle this problem with "a new student data system with the capacity to identify and track student enrolment, movement and retention," according to the report *Securing Saskatchewan's Future, the Provincial Response – Role of the School Task Force Final Report* (Government of Saskatchewan 2002).

> **Kids don't stay away from school for no reason.** (*Kids Not in School, Making Connections ...*)

A plan is immediately needed to reconnect these children and youth to school. It must involve families and communities stressing the importance of education both for the youth and for the future of the community. While one outcome is preventing criminal behaviour, the far more pressing need is to provide these children and youth with a future, and a chance to reach their potential. Engaging these children and youth to stay in school will require creativity.

Sharon Fyke, project coordinator for Kids Not in School in Saskatoon, says:

> **Flexibility is essential as we reach out to disconnected youth. We need to be receptive to ways of inviting young people to learn. By validating community programs which are already engaging youth in a meaningful experience, we open the door to an expanded vision of what school might look like. One credit may not seem like much, but for a youth who has become disconnected from school, that one credit can be a positive step forward serving to connect him or her to the mainstream.**

This type of response fits within the School^{Plus} vision.

Other programs using mentors and role models have been successful. Mentoring can be between adults and youth, between youth, and between youth and children. Programs have a positive effect on education and family, and reduce criminal activity. (Green & Healy, 2003). Big Brothers and Big Sisters are two well-documented successes.

In the next decade, provincial labour shortages will mean jobs for First Nations and Metis workers if they have the education and skills. This demands new ways of teaching and engaging First Nations and Metis youth.

Barriers to educational success are: difficulties with peers, drugs and alcohol, truancy, fighting and sexuality. Some First Nations and Metis students have difficulty moving from Grade 8 to high school, and there are few jobs available for them as an alternative to education, according to the National Aboriginal Consultation Project.

This Commission believes that every child has a right to an education under international law, and First Nations Treaty rights. Every child also has a right to an education, according to Article 28, Section 1 of the Convention on the Rights of the Child. (See Appendix 12.)

Governments must ensure that children's right to education is not eroded by government policy. The Commission was told that funding increases for First Nation's post-secondary education has been "capped" at 2 per cent annually. As tuition rises, the number of students able to receive funds is reduced. A growing number of youth are trying to access a fixed amount of money. Therefore the proportion able to receive a financed post-secondary education is further reduced. Metis youth have no such funding. Declining support for post-secondary education amounts to a barrier to success.

'Capped' refers to a fixed amount of funds not determined by need.

> **While governments argue over their respective responsibilities, another generation of youth is denied access to those opportunities essential to creating a better life.** (Standing Senate Committee on Aboriginal Peoples, 2003)

Recommendation 8.3

This Commission recommends that the Government of Canada meet its legal, fiscal and historical obligations to the education of First Nations people. This includes ensuring adequate funding for post secondary education and a commitment to engaging First Nations children and youth in achieving educational attainment both on and off-reserve.

In 2003, Saskatchewan Learning published a policy framework for Saskatchewan's pre-kindergarten to Grade 12 education called' *Building Partnerships: First Nations and Metis Peoples and the Provincial Education System*. The Minister of Learning stated "my vision for the province is of a shared future one that builds on the strengths of our existing institutions and traditions and ensures that they continue to achieve their intended functions, by fairly representing and serving all Saskatchewan people ... It is my strong belief that the continued success of our province lies with the transformation of the existing system to include, reflect and embrace the needs and voices of all our people." This Commission shares this vision and supports the direction taken.

The Commission heard of a number of innovative programs operating out of youth centres that attempt to reach disengaged youth. These programs did not have enough funding and were unable to offer children the required education. Youth in these programs understood the value of education, but few felt they would receive enough education to make a difference in their lives. They must have alternatives to education in formal institutions.

Recommendation 8.4

This Commission recommends that the partners in the Policy Framework for Saskatchewan's Education System develop and deliver education outside the traditional school system to those not presently attending school between the ages of 6 and 16. This will require identification of these children and youth and subsequently finding creative means of ensuring their right to an education is respected.

Increased Youth Unemployment

The First Nations and Metis unemployment rate is much higher than the non-Aboriginal unemployment rate. The public and the private sectors need to "create more jobs for youth," a Youth Justice Circle Event at Nutana Collegiate in Saskatoon told the Commission.

Aboriginal people who possess a university degree will most likely earn more than $50,000 a year and experience an unemployment rate similar to that of the general population. (Brunnen, 2004)

Youth have ideas about how this can be accomplished, and should be consulted. Youth suggest preparing for a job begins in elementary school. It is not enough to wait until they come of age to work. A work education plan would provide hope, skills and a vision for a prosperous future. Introducing job readiness, mentorship and school work programs to give youth the skills, work ethic and confidence to find jobs, are a few of the ideas suggested during the dialogues. They noted not all students are interested in university.

> **Ensuring Aboriginal youth are provided every opportunity to obtain the education and training needed to compete successfully in the labour market in one of Canada's most important challenges.** (Brunnen, 2004)

First Nations and Metis youth face a number of barriers in the labour market.

> **These do not stem from an unwillingness to participate in the labour force but rather from a lack of success in securing and retaining employment.** (Brunnen, 2004)

YOUTH VOICES

The Commission met with First Nations and Metis youth across Saskatchewan in dialogues, at youth centres, in open and closed custody facilities and in schools. They told the Commission what they thought about the criminal justice system and suggested solutions. Some met independently and gave the Commission reports on a variety of topics. The Youth in Care and Custody Network focused on access to, and communication with, social workers. Experience tells them that the government acting as parent has in some cases "proven to be a direct cause of youth ending up in the justice system." Issues they felt to be significant were services to children, children being removed from their families, youth with disabilities, the education system, children living in poverty, addictions and racism.

Metis youth expressed concern about youth facilities being centres to learn criminal behaviour, racial profiling and how they need to be valued. They also wanted to be included in decisions being made about them. They said that youth had promise, if given the opportunity.

At a workshop held at the Rabbit Lake Mine, youth from the North discussed four key areas in their lives: education, leadership, recreation and communities. These youth want change and want to be part of that change.

First Nations and Metis youth feel they are often feared and misunderstood. They sense the media's portrayal of them is the reason. The media often focus on a few youth that make wrong, but sensational, choices.

The youth reminded us that not all of them are in conflict with the law. There is a small group of persistent offenders responsible for the sensational news reports. Those in young offender facilities want to be united with their communities. They urged us not to give up on them. Many young people feel they have much to contribute and want to help make this world a better place.

Youth currently coming before youth court are usually First Nations or Metis and poor. They rarely attend school, are behind academically and may have a learning disability. They are more likely to have psychological disorders, and are more likely to suffer from depression. They are more prone to suicide and dangerous behaviour than the general youth population, according to Ross Gordon Green and Kearney F. Healy in their book *Tough on Kids: Rethinking Approaches to Youth Justice*.

Youth feel society views them as "the problem," while they want to be part of the solution. They want to be more involved, to make themselves heard. An example of this is the Provincial Youth Delegation's *Blueprint for Change* that asked government, community and the private sector to connect with youth and improve the high school system. They gave policy makers suggestions for change. For example, regarding the Kids Out of School issue, one proposal was to make schools more inviting and relevant to youth. Some recommendations focused on a new way of delivering education and a better understanding of student needs.

There are as many styles of learning as there are of teaching. It is important for teachers to remember and respect that. (Danny Anderson, Provincial Youth Delegation member)

Voices for Change

> **We are people too!** (Beauval Youth Justice Issues presentation to Commission)

The following is a summary of the "voices for change" the Commission heard through its dialogues, presentations and in-camera sessions with children and youth from across Saskatchewan. The Commission believes that for our children and youth to achieve a healthy, prosperous, just and safe Saskatchewan, they must be included and take part in the discussion. To be included their voices must be heard. The following is not an actual quote; however, the text was approved by a number of the youth and organizations that spoke to the Commission.

Teach us

Teach us about our First Nations and Metis culture and history.

> **We have much to learn from the Elders about our culture and about our people. We have much to teach the Elders about ourselves and our changing world. Together, we will**

> **learn in order to better understand our past, the present and the future. Most importantly we will learn to better understand those things that define us as a people.** (Community Vitality Partnership, 2002)

Create opportunities for Elders to teach, "... re-establish the traditions, where we offer tobacco to the Elders and use the Round Dance as one example or one place to counsel the youth about respect, and counsel the members about our ways." (Battleford Community Dialogue) Youth expressed interest in events that bring themselves, adults and Elders together to share with each other. (Youth Justice Circle Event, Nutana Collegiate)

It starts at home, how you raise your children. A lot of us lost that ability, but I'm sure our Elders and our people at the local level could support each other in parenting skills. (Speaker, Beauval Community Dialogue)

The Saskatchewan Youth in Care and Custody Network asked that more respect be given to the Elders for their ability to work with youth. The connection of youth and Elders is valued. We have limited access to Elders both in the community and in young offender facilities. Along with counsellors, there should be Elders available. The Elders agree. "We believe Aboriginal cultural programs are important and must include more active participation of Elders, ways of learning about other cultures and ... encourage a more contemporary and positive image of our Aboriginal culture." (Community Vitality Partnership, 2002)

Teach us respect and to be good parents. We "need to be taught respect" and this needs to be taught in our homes by our parents. The future is about having a family of our own and of giving our child(ren) a better life than we had. We need the support and guidance necessary to parent our children properly.

Lead Us

> **Listen up, you leadership out there, the mayor and council, the chiefs and councils, the recreational directors, quit leaving us behind. In your budgets every fiscal year what's at the very bottom of the list? Recreation, youth. Don't put us there. If you want to be proactive with us you put us second or third, do not put us down in fifteenth place.** (Speaker, La Ronge Community Dialogue)

Lead us by example. The leaders of today have the responsibility to demonstrate good governance. Youth spoke about leadership in a broad sense, not only about those in political offices but those who walk before us. Leaders are those in positions that make decisions on behalf of others, particularly youth. These are teachers, social workers, political leaders and others.

> **But the common goal is to try to make sure to develop our children to become leaders of our community and help raise them to be positive leaders in our community and become a role model within the community.** (Speaker, Beauval Community Dialogue)

Leadership is often indifferent to us. Transparency and accountability need to be present in leadership.

> **If we are expected to respect the law, the law must respect the youth and their needs. We are not born bad, we just learn how to behave from our leaders, our parents and our peers.** (Speaker, Beauval Community Dialogue)

Good leadership and healthy role models among the leadership and by peers provide youth with the foundation for a bright tomorrow.

> **We can all work together to keep our kids developing within the communities and help them be the leaders in the future.** (Speaker, Beauval Community Dialogue)

Include Us – Give Us Voice

Let us have a say in decisions that affect us. Let us take an active role in family, community and society. We are citizens of today's society and are able to make a valuable contribution to maintaining social order and teaching others cultural values.

> **Nobody listens to us, we don't have a voice.** (Youth, Prince Albert Youth Outreach)

First Nations and Metis children today are a large and soon to be voting population with a powerful voice in the coming years. Leaders would do well to pay serious attention. We have been ignored and excluded from decisions that affect us.

> **It started a few years ago where the youth in the community wanted a greater voice. And what was happening in our Cree Nation, here they at that time started a youth chief and council. They have their own Election Act. They also select their own leaders. They have an age group. Those leaders have to uphold a certain lifestyle and they have to have certain ethics that they need to uphold as well. The youth are represented on every major board and committee in the community now, and all the major decisions that are happening in our community involve the youth. It is not just a young person who sits there [education committee] with a good idea. We have gone farther and say your input here is worth a vote.** (Speaker, Montreal Lake Community Dialogue)

As youth, we have knowledge and experience with the system that we are willing to share. We want to help make things better for the future. But no one asks us.

A Child in Care
When a family experiences problems threatening the safety of some members, the children may be placed in out-of-home care or in the care of the minister. The minister then becomes their "parent."

We all agree that education is the key, in some cases it's the only hope these children have to have a better life. (Speaker, Regina Friendship Centre)

The way out of alcohol and poverty is education. It is true. It's education. (Speaker, Black Lake Community Dialogue)

> **You guys have done a lot of work for us, but you know what, that's not what we want. It's everybody up top talking about what the kids want instead of talking to the kids about what the kids want.** (Speaker, Melfort Community Dialogue)

Let us contribute. Our participation promotes learning, increases a sense of belonging and serves to develop community through strengthening ties between generations. We see ourselves as able to be a part of our communities' healing and the designing of the future. We want to be consulted when policy is being developed that affects us.

We can help heal ourselves, youth can help other youth and youth can be mentors to other youth. Please hear our voices.

Educate Us

> **Everyone in our communities has a role to play in our education – parents, peers, students, teachers, mentors, leaders, grandparents, Elders and ourselves.** (Community Vitality Partnership, 2002)

We understand the importance of education. We need the support of our families and communities to get an education. Leaders and parents must appreciate education and promote its benefits. The impact of residential schools is one reason for the lack of respect or appreciation for education.

Youth from the North and some from reserves expressed concern about the relevance and quality of their education. These youth see the need to be able to compete with the larger society. They want more math and sciences. They asked that new and creative means of delivering these subjects to isolated communities be explored. Schools must include youth in planning and in creating environments that encourage learning.

The Provincial Youth Delegation report *Blueprint for Change* calls on government, community leaders and the private sector to engage youth and improve high school education in Saskatchewan. It makes 15 recommendations that can be broken down into five areas: supports, extra-curricular activities, respect, school board involvement and school environment (safety, discrimination and communication). Student and parent involvement in developing policies is important for successful implementation of any education program, and will be particularly important in putting the School^{Plus} philosophy into effect.

Information about the law should be provided to all elementary students, especially in the First Nations and Metis communities, to increase understanding and respect for the law, the Metis Nations - Saskatchewan Youth Council, Inc. said in its presentation. Youth want to understand the system and know about the rights and responsibilities of being a member of society.

Employ Us

First Nations and Metis youth want to be able to get jobs and contribute to the economy. Programs that prepare youth for employment must begin before it is time to get a job. More opportunities to gain skills to get a job are wanted. Mentoring programs and learning on the job programs were two approaches suggested. Schools were seen as being able to offer employment skill development.

If a person has a job, he can raise his family, feel good about himself, his family will be brought up, he'll look after himself and won't get in trouble with the law. (Speaker, Governance Roundtable)

Youth in young offender facilities want to have jobs too. The staff at a youth facility said that when youth are able to get jobs, they do not return to the criminal justice system.

> **We do have a lot of kids who want to work, but they don't have any experience. So what we're trying to do is teach them ... teach them some kind of experience, also teach them that you can work for money, you don't have to go do a B&E or rob somebody or sell drugs in order to get money, you can actually work and get money. It's basically to teach them work ethic, work skills, build their self-esteem and keep them out of trouble.** (Speaker, Fort Qu'Appelle Community Dialogue)

The Provincial Youth Delegation stated "businesses need to create unique vocational and educational opportunities for students to provide youth with applicable skills for the workplace (e.g. mentorship, job shadowing, entrepreneurship)."

Youth who had attended the Nisbet Youth Centre in Prince Albert supported the work-training program. The program partnered with the business community in developing and providing job-training activities in forestry, cooking and highway maintenance. These job skills led to employment after custody. (Nisbet Youth Centre was closed in March 2004.)

Believe in Us

Why is being locked up seen as the only answer?

When the first person that seems to have taken an interest in your well-being is a youth court Judge, "society has failed us," a youth told the Egadz dialogue in Saskatoon. Those with probation and social workers wanted a "worker that is understanding, caring and supportive," a youth told the Commission at the Beauval Community Dialogue.

> **We need to get to kids before they are 14 or 15; we need to get to them at 10 or something. We need to develop a passion for them. We need someone to spend time with him or her. The need for more opportunities and want to do something instead of drinking and drugs. When they are**

> **older they will have more respect and know right from wrong**. (Submission from Metis Family & Community Justice Services Inc.)

The way the system operates needs to change. What sense does it make locking us up for breaking a curfew, or for failing to appear when the court date is months after the offence? We often have no one to help us in organizing our lives, to assist us in remembering times, dates and places. A lot of youth appear before the courts alone with no family or community support. Youth need help to sort out the system.

> **Where do we go for help to say, okay, like how do I get through this system, what am I going to do?** (Speaker, Beauval Community Dialogue)

The Central Urban Metis Federation Inc. suggested a justice liaison worker to help offenders and their families.

Mediation is a better process than the court process. It seems once youth enter the court system they're in the system for most of their young lives. By the time they're adults they're branded as repeat offenders. Mediation teaches youth there are other ways of dealing with conflict and they have the opportunity to learn how their actions have affected others. (Speaker, Beauval Community Dialogue)

> **When we consider the challenges that Aboriginal youth face in Saskatchewan today and we think about how to overcome those challenges, it is important to note solutions aren't found in prison. In fact, prisons separate young people from many of their forces which can help them to keep ... take responsibility, re-connect to their families and move on. If there's one reform that deserves serious consideration, it is a massive shift from the temporary expensive Band-Aid solution of incarceration, to the restoration, healing, and connection that can take place in a young person's own community**. (Speaker, Saskatchewan Youth in Care and Custody Network)

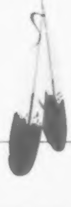
Youth expressed appreciation for a number of programs. Operation Help is one example of a positive response to youth sex trade workers that is innovative and non-traditional. It tries to provide an alternative to criminal prosecution. This project offers youth a team that cares and is willing to give them a chance to make good choices, according to Green and Healy (2003). Programs that build positive relationships between youth and police are encouraged.

Heal Us

If we need it, help us heal from the trauma of our childhood.

> **Entire family units, not just the youth in trouble, have to be involved in healing processes**. (Speaker, Beauval Community Dialogue)

We may be victims of families in crisis. Often we do not belong to a community. We lack a culture with which we can identify. We are often both victims of crime and offenders. Often only the offending behaviour is seen. A number of youth have no vision of themselves in the future.



> **We grow up and give up ... they figure that, well, this is my life and nobody cares about me ... they just don't feel like they have any hope and they just – they drift away.** (Youth speaker, Fort Qu'Appelle Community Dialogue)

Establishing healing centres and cultural camps as alternatives to incarceration will keep the youth in the community and help heal the whole family.

> **I'd like to see, if possible, a healing lodge with natural surroundings, utilizing our traditions and culture. And also Elders, you know, to talk to these young people, to utilize the ceremonies that they use for healing. I think that would be more powerful in dealing with the healing that needs to happen. And it can also be utilized as a family retreat too.** (Speaker, La Loche Community Dialogue)

Help our families heal from the effects of alcohol and drugs.

> **Number one, the alcohol and drugs that are in the communities, they'd [youth] like to see a stop with something like that. They didn't say how they'd like it done, but they would like to see a stop to that because the parents ... sometimes the kids actually choose to go to Dojack [young offender facility] rather than staying back home because they have to deal with the drugs and the alcohol of the parents.** (Youth speaker, Cowessess First Nations Community Dialogue)

Help us by providing healthy activities in healthy communities.

> **Once a youth understands who they are as a First Nations or Metis person, they start to develop that sense of pride, that self-esteem, they live a healthy life, they can fight anything that comes their way.** (Youth speaker, Saskatoon Town Hall Meeting)

Youth want to be involved and contribute to building a better community.

> **The way we look at it is that promoting a healthy lifestyle ... promotes self worth ... which is step one in promoting a healthy lifestyle and being a productive member of society no matter what culture you're from.** (Speaker, Metis Nation – Saskatchewan Youth Council Inc. presentation)

Give Us Recreation

Recreation improves our self-esteem and self-confidence. Recreation is sport, art, music and culture. Recreation gives people a sense of value by making them feel a part of something positive and proud.

Don't be anxious to lay charges on us for trivial matters, give us a chance to go to mediation so we can have the opportunity to effect positive change in ourselves and in our community. (Speaker, Beauval Community Dialogue)

> **Good recreation brings people together, involves youth, leaders and community members in an interactive way, builds self-confidence and makes participants feel good about themselves.** (Community Vitality Partnership, 2002)

Someone had to have a place for them, a place for them to be where they can be happy. This is the dream that I have and I'm not going to quit talking about it until someone hears me. (Speaker, Sandy Bay Community Dialogue)

Youth want a supportive place to go where they can tap into their interests, develop their talents and nurture their leadership abilities: a place where they are more than just a sum of their problems.

The Metis Nation – Saskatchewan Youth Council Inc. told about the Urban Multipurpose Aboriginal Youth Centres (UMAYC), designed, managed and implemented by First Nations and Metis people.

> **Throughout Saskatchewan we have had various UMAYC centres, in Yorkton, North Battleford, Ile-a-la Crosse, and these centres, when they had them there...the crime rate, especially in North Battleford went down.** (Speaker, Metis Nation – Saskatchewan Youth Council Inc. presentation)

The centres provide services that encourage school completion, increased participation in employment, skill development, career counselling and training. They also improve self-esteem, living skills and parenting. The results were increased participation in health, cultural and recreational programs and less participation in gangs, criminal activity, and alcohol and drug abuse.

> **The number of youth on the streets decreased and it was all because they had this tremendous individual to teach them about culture and heritage, to give them that pride, who took them off of the streets and gave them something to do.** (Speaker, Metis Nation – Saskatchewan Youth Council Inc. presentation)

Recreation promotes healthy lifestyles through wholesome activities and "is a positive tool in community development" was a conclusion of the Community Vitality – Northern Saskatchewan Youth Workshop at Rabbit Lake Mine.

> **It's a proven factor ... that in all a good solid recreation system within a community will reduce a lot of these negative activities in the community ... And when you look around all over, and you look at the leaders in the community, their background is recreation.** (Speaker, Beauval Community Dialogue)

A MESSAGE FROM YOUTH TO YOUTH

> **Try something new that you wouldn't think of trying. It will help you to grow. Don't listen to what people might think negative or bad about you because you are not. Be strong and recovery takes time to happen. In time your life would change for the better, you give yourself a chance to grow and see another side of life. Trust me it does work.** (Saskatoon Communities For Children Canada, 2003)

You can be the change that is needed by making good choices. Every person can make a difference by starting with oneself. Here are some ideas of where you can start.

- Be a role model building on traditional laws, values and spirituality.
- Support and learn alternative ways to settle conflict.
- Take peer-to-peer training to support and help vulnerable or at risk youth who are not part of mainstream society.
- Provide support and model values that show others there is another way.
- Help stop the cycle of violence by reaching out for help and being responsible for your actions.
- Connect with an Elder and learn your history.
- Ask for help.

PLAYING TOGETHER

> **We need a society that plays together**. (Speaker, Saskatchewan Culture, Youth and Recreation presentation)

Social barriers facing First Nations and Metis youth can be dealt with in play and by cross-cultural activities. When people come together for play, they share culture, talents and traditions.

> **As a community we built a beautiful school and spent an extra $800,000 to build a beautiful gym. But when four o'clock comes, the building shuts down and the volunteers from the staff and community just aren't there. So the youth have nothing to do, they are going to get into mischief.** (Speaker, Beardy's Community Dialogue)

These organizations may be able to help you:
National Youth in Care Network 1-800-790-7074
Kids Help Phone 1-800-668-6868
Children's Advocate 1-800-322-7221

Recreation develops social behaviour. Involvement in sport, culture and recreation gives youth basic skills for success. Play provides opportunity to develop leadership and social skills.

> **We need more recreation because boredom is the number one issue affecting the whole North. Kids that are bored will get into trouble. Living in the North has advantages but also has many, many disadvantages, such as lack of recreational facilities, structured programming.** (Speaker, Beauval Community Dialogue)

It is necessary to find opportunities for children and youth to improve their social development and become the best that they can be.

> **I believe that if we bring our communities closer together by talking, working and learning from one another, then hopefully it's not going to happen over night, but hopefully in the years to come the justice system will change, attitudes will change, communities will become closer together and when they become closer to each other we all learn from one another. We learn the spirituality, the religions, the cultures and with that we can only become a stronger community and maybe together we can all work to do something in this regard with the young offenders.** (Speaker, Cote First Nation Community Dialogue)

Holistic and Integrated Service Delivery

The Commission's third Interim Report recommended "that integrated case management becomes an integral part of the service delivery of every human service department or agency of the Government of Saskatchewan."

In response to the demand for a holistic integrated approach to human service delivery, the Assistant Deputy Ministers' Forum on Human Services was formed in 1994 in Saskatchewan. In 1999 it was renamed the Human Services Integration Forum (HSIF). The forum is made up of seven provincial government departments and the Executive Council. The HSIF approved the creation of nine intersectoral committee (RIC) coordinator positions. The purpose of the RIC is to further the regional services integration agenda associated with community development functions as advanced by the HSIF Forum. The Commission was encouraged by its presentation:

> **Service integration, we think, requires a permanent shift in thinking. It's not a flavour of the month response. It really means that people have to think differently about the relationships between services. But there is a powerful mechanism for meeting challenges, particularly if challenges are complex. Where people have simple, direct**

> **problems, they tend to be solved by one agency and they go away, but where issues' needs are complex we need to work together.**
>
> **And the last point about service integration in terms of what the literature really tells us is, we have to forge linkages between individuals who work with people; that you can't actually work together with people that you don't know, and those linkages need to be forged at the community level as well.**

Throughout the dialogues it became apparent that this policy is little known, understood or applied. The Children's Advocate, in a review of child deaths, has repeatedly recommended integrated case management for children's services. In her report, released in December 2003, progress is noted. Service providers acknowledge "that every child or youth could benefit from integrated case management" and that "more work needs to be done."

Youth and people speaking on their behalf told the Commission that youth are often sent from one service provider to another. This makes it difficult for them to establish a relationship with any one provider. The result is frustration and the youth giving up. We suggest that one service centre with one case manager per child or youth be created. This was referred to as "one stop" shopping.

The Promise of School^{Plus}

Schools are key to an interagency network serving the needs of all children, youth and families. The importance of community based schools was recognized at the Commission's Roundtable on Restorative Justice:

> **Getting an interrelated community giving information to the schools who work with the kids, sharing knowledge and resources and recognizing all of the people who are part of the community, recognizing that we're all part of the community...**
>
> **We're advocating the community school approach, taking that route. Focusing on the children, and realizing that if we are going to focus on the children we have to focus on the parenting they receive, it comes down to prevention. Stop starting new programs and build on the existing successful ones.**

School^{Plus} provides a philosophical base for combining learning with support services. The final report to the minister of education of the task force and public dialogue on the *Role of the School* states:

> **Schools as we know them were never designed to meet the needs of the whole child. As our province moves into a critical juncture of its history, however, and when full cognizance is taken of the diverse needs of children and**

There needs to be interagency approaches to addressing issues, a holistic approach, which is all-inclusive. The government needs to empower departments to allow them the freedom to address local issues. Don't allow the provincial policies to dictate and prevail. (Speaker, Beauval Community Dialogue)

Goals of School^{Plus}

1. All Saskatchewan children and youth have access to the supports they need for school and life success.
2. Shared responsibility for the well-being and education of children and youth.
3. A harmonious and shared future with Aboriginal peoples.
4. High quality services and supports linked to schools at the community level.
5. Strengthened capacity within the provincial education system and high quality learning programs.

(Saskatchewan Learning 2004)

> **youth, it becomes clear that a radically new approach must be taken to meeting their needs. School^{Plus} is not, therefore, school as we know it today with more added on; School^{Plus} is, instead, intended to be an altogether new organizational environment for meeting the needs of children and youth.**
>
> **School^{Plus}, once fully developed, will be a matrix organization that will draw all of its resources from existing governmental and non-governmental agencies, but it will coordinate and integrate those resources in relation to the needs of children and youth. This kind of articulation is just not possible in the current administrative structure where discrete "stove pipes" are the conduits for service. Cooperation and collaboration are possible, of course, but there are limits beyond which only a more fundamental reform can take us.** (Tymchak, 2001)

The task force recommended that all services to children and youth be delivered in an integrated environment linked to the school. It also recognized the importance of allowing that environment to be defined at the local level.

> **That the Government of Saskatchewan authorize the principle that all services to children and youth in the province shall be delivered in a truly integrated environment that is school-linked and, where possible and feasible, school-based.** (Tymchak, 2001)

This does not mean that human services move their offices into schools. It does mean that in practice, human services offered to children and youth will be linked to one service provider delivered out of school through integrated service delivery mechanisms.

Final Report of the Minister's National Working Group on Education – *Our Children – Keepers of the Sacred Knowledge* (December 2002) can be located at www.ainc-inac.gc.ca/ps/edu/finre/bac_e.html

The final report of the Minister's National Working Group on Education (INAC) commented:

> **A healthy education system or program relies on the active participation of parents and the community. Parental leadership in First Nations education for both on and off reserve students is an essential element to a healthy education system. Parental and community involvement in First Nations education has neither received the proper attention from federal, provincial and territorial authorities nor the resources to facilitate it, despite the policy being recognized and adopted by the federal government in 1973 when it accepted the policy of "Indian Control of Indian Education."**

This Commission understands that there must be significant change within schools, across human service agencies, and in families and communities if School$^{\text{Plus}}$ is to become a reality. A School$^{\text{Plus}}$ indicator framework is being developed to monitor the extent of progress.

> **What we really need to face is that schools have two jobs. First and foremost, the traditional job is to educate children and youth, but also to act as centres of support to service delivery. They have to be prepared to address social, health, recreation, justice and other issues in children's and families' lives if children are going to be successful.** (Speaker, Human Services Integrated Forum Meeting)

Recommendation 8.5

This Commission endorses the direction of School$^{\text{Plus}}$ but is concerned that without resources and a collaborative approach, School$^{\text{Plus}}$ will not succeed. Therefore, it is recommended that the Government of Saskatchewan ensure that School$^{\text{Plus}}$ is a priority and fully resourced.

Urbanization

Fifty per cent of Saskatchewan First Nations and Metis youth live in towns and cities. In the two years before being placed in custody, 56 per cent of First Nations and Metis youth lived in a city, 22 per cent lived in a town and 21 per cent lived on a reserve, according to Justice Canada. The changing distribution presents new problems in terms of needs and jurisdiction. Recognizing this, the Senate Standing Committee on Aboriginal Peoples created a plan to support the social, cultural and economic well-being of Aboriginal youth living in towns and cities. It is called *Urban Aboriginal Youth: An Action Plan for Change.*

The complete One-Day Snapshot of Aboriginal Youth in Custody is found at http://canada.justice.gc.ca/en/ps/rs/rep/snapshot.pdf

The Senate Standing Committee on Aboriginal Peoples report notes that the city youth population is mobile and this adds to the already major problem of delivering such things as health care, housing, social services, training and education. In changing to city life, First Nations and Metis youth may "experience a profound sense of cultural dislocation and powerlessness upon arrival," says the report. Many First Nations and Metis youth join gangs to substitute for lost community, connectedness and identity.

It was also reported that youth are "often entirely unaware of what programs and services are available to them, where to access services, or with whom to speak to get information about the supports available."

Recommendation 8.6

This Commission recommends that all urban municipalities consider the need for transitional or orientation programs for First Nation and Metis youth who move from reserve or rural areas to the urban centres.

The *Report of the Royal Commission on Aboriginal Peoples* says:

> **Wrangling over jurisdiction has impeded urban Aboriginal people's access to services. Intergovernmental disputes, federal and provincial offloading, lack of program coordination, exclusion of municipal governments and urban Aboriginal groups from discussions and negotiations on policy and jurisdictional issues and confusion regarding the political representation of Aboriginal people in cities have all contributed to a situation that has had serious adverse effects on the ability of Aboriginal people to gain access to appropriate services in urban centres.**

Profile of Aboriginal Children in Regina: Prospects and Challenges can be found in Volume 2 of this report.

The Saskatchewan Institute of Public Policy's *Profile of Aboriginal Children in Regina: Prospects and Challenges* is a statistical report on Aboriginal children in Regina. The report reveals many factors that can be applied to other Saskatchewan cities. It recommends "more and effective policies and initiatives aimed at helping Aboriginal children" in cities and more local understanding. We need to know about the "interaction between Aboriginal children and the educational system in areas such as attendance, mobility, performance, curriculum and classroom diversity. Health indicators such as: usage of mental health services, suicide rates, teen pregnancy, and malnutrition, point to a need to support single parents so that they are able to provide for their children." The Commission agrees there is a need for more local awareness and for control of services to be returned to First Nations and Metis people regardless of where the community exists. Further, the Commission recognizes that the role of government in providing services must shift. Responsibility must rest with the community.

Well measured and consistently collected indicators of child and family well-being provide a way to monitor the condition of children and families, today and over time. Such information can profoundly change the ways we think about important issues in our personal lives and in the life of the nation. (www.childtrends.org)

All levels of government should work together to improve the quality of life of First Nations and Metis children and youth. A measurement of child well-being needs to be created, particularly for First Nations and Metis children living in cities. This measurement will provide direction to policy makers. The measurement for 2004 will provide a standard to judge future efforts.

Recommendation 8.7
This Commission recommends that the Government of Canada consult with First Nations and Metis people to establish indicators of quality of life for 2004 for First Nations and Metis children in Saskatchewan's urban environments and that in 2009, these indicators be re-evaluated by investigating actions and initiatives undertaken to improve the quality of life of these children.

Responsibilities and Rights

First Nations leaders wished to ensure a future for their children and their children's children and therefore signed the Treaties. First Nations history says, "It's all about the children." The Elders' traditional teachings speak about the responsibilities of caring for children. They speak of a code of practice that guides children through the various stages in their lives. They speak about the leadership and guidance of children and youth and the role the entire community plays in the development of a child.

> **You know, when a child is born, when they first cry out, when they have that little whack on the bum they cry, start crying, they're not only crying out, they're saying something. That's what they [Elders] said. What they [the children] say is "what I hold in my little hand is my future. I'm going to maintain that future, I'm going to protect that future." That's what you come in saying to this world. And that's another thing that we have to do us adults, it is our responsibility to help and guide that child that brings our future.** (Elder speaking at Elders Dialogue)

First Nations and Metis children have often not been treated with respect and dignity by the systems that are supposed to care for them. They have been denied a range of services to which they are entitled. For example, when children are removed from their homes they are often denied access to their family and culture. When children are suspended from school, they are denied the right to an education. When children leave the reserve and move to a city, they may be denied access to medical care. When children are forced to live without money, without effective parenting and without supportive communities, they are denied healthy development, the National Action Plan says. When schools fail to provide youth with the skills to be employed they are denied economic prosperity. When youth do not have access to legal aid they are denied equal treatment before the law. When decisions are made about children and youth without including them they are denied proper participation in decision-making.

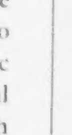
All children and youth have rights protected by Canadian law under the Charter of Rights and Freedoms and by international law under the United Nations Convention on the Rights of the Child. The Declaration on the Rights of Indigenous Peoples also protects the rights of the Indigenous child.

On November 20, 1989, the United Nations General Assembly promised certain things to children by adopting the UN Convention on the Rights of the Child. The convention, which Canada has signed, outlines the rights that children have as members of the human family. It recognizes that children, because of their vulnerability, need special care and protection. It places special emphasis on the primary caring and protective responsibility of the family, the need for legal and other protections, and the importance of respect for the cultural values of the child's community.

It's all about children (Elder speaking at Elders' Dialogue)

Under the Convention on the Rights of the Child children have these rights, among others:

- Right to preserve his or her identity, including nationality, name and family relations.
- Right to have a voice, to express opinions and have them listened to.
- Right to be protected from all physical and mental violence, injury or abuse, neglect, sexual abuse, and sexual exploitation.
- Right not to be arbitrarily detained.
- Right to immediate access to legal assistance should he or she be detained by police for any reason.
- Right to proper nutrition and housing.
- Right to an education.
- Right to a full and decent life for all mentally or physically disabled children.
- Right to play.



There is an immediate need to create a means to monitor the federal government's responsibility for First Nations children and for the implementation of the Convention on the Rights of the Child to ensure that laws, procedures, authorities and institutions comply with it.

The UN General Assembly special session on children was held in 2002. Children from Canada and other countries around the world participated in the creation of a document called *A World Fit for Children*. Children took part in preliminary meetings, negotiations and as full delegates to this session. This was the first time that children were included in a meaningful manner. The document articulates a comprehensive vision for the world's children:

> **We stress our commitment to create a world fit for children in which sustainable human development, taking into account the best interests of the child, is founded on the principles of democracy, equality, non-discrimination, peace and social justice and the universality, indivisibility, interdependence and interrelatedness of all human rights including the right to development.** (Preparatory Committee for the Special Session of the UN General Assembly on Children, 2001)

In response, Canada committed to a National Plan of Action for Children, especially for First Nations children under federal jurisdiction. Effective national legislation, policies and plans with resources must be created to fulfil and protect the rights and secure the well-being of children.

In October 2003, the Committee on the Rights of the Child, 34th session, stated that it "recommends that the state [Canada] establish at the federal level, an ombudsman's office responsible for children's rights and secure appropriate funding for its effective functioning." (The National Children's Alliance)

Recently, the UN Permanent Forum on Indigenous Issues, at its second session, focused on indigenous children and youth. The forum recommended "that UNICEF consider the appointment of a goodwill ambassador of indigenous children and youth to raise public awareness and that it urge all UNICEF ambassadors to pay attention to the specific problems of indigenous children and youth." (United Nations, 2003)

Saskatchewan's Children's Advocate has a website at www.saskcao.ca or call 1-800-322-7221

The Commission is aware that many services, especially to First Nations children, fall under federal jurisdiction. These children do not have an independent advocate to ensure they receive the services they are entitled to under the Treaties and by law. In Saskatchewan, there is the Children's Advocate Office. It is to promote the interests of Saskatchewan children and youth and ensure that the rights of children and youth are respected in our communities and by the provincial government. The Children's Advocate is directed to provide public education on the interests of children. The Children's Advocate reviews and investigates matters that come to their attention about services provided to a child or group of children by the provincial government and recommends changes if necessary. Any person providing advocacy services to children and youth must have sufficient powers to deal on a more or less equal footing with various government departments or agencies and to recommend or create policies which would improve children's lives.

Recommendation 8.8
This Commission recommends that by April 1, 2005 the Government of Canada establish a Children's Advocate for Canada's First Nations and Metis children, reporting to Parliament, and accountable to First Nations and Metis people, with legislative authority to monitor and evaluate the impact of Canada's National Action Plan for Children, and be responsible to promote and protect the rights of First Nations and Metis children.

The Saskatchewan and Canadian governments, the Federation of Saskatchewan Indian Nations and the Metis Nation - Saskatchewan must make a long-term commitment to children and youth and show leadership in promoting youth rights and responsibilities. Immediate action can be taken to create opportunities for children and youth to be included in all decisions that affect their lives. A review of all current law, policy and practice to ensure that youth are included and treated with respect and dignity should begin immediately.

Recommendation 8.9
This Commission recommends that the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan, in consultation with Saskatchewan's Children's Advocate, collectively review options to ensure that First Nations and Metis children, their families and their communities are afforded services and that advocacy services are provided in an accessible and culturally sensitive manner that respects their full human dignity.

This Commission believes action must be taken to make the most of the opportunity the First Nations and Metis child and youth population presents for Saskatchewan. Taking into account the province's demographics, unique geography, growing urbanization, and jurisdictional questions, the Commission recommends a plan of action built on the cornerstones of inclusion and holistic and integrated services. A sample of an action plan is provided in Appendix 13.

Recommendation 8.10
This Commission recommends that all governments transcend jurisdictions in the best interest of our children and our collective futures by creating a Declaration that addresses relationships between jurisdictions and creates long-term Saskatchewan First Nations and Metis Children and Youth Action Plans.

Recommendation 8.11
This Commission recommends that all Governments collaborate to sign a Declaration and create long-term Saskatchewan First Nations and Metis Children and Youth Action Plans that transcend all jurisdictions in the best interests of our children and our collective future.

And that the Declaration be signed addressing the relationships between jurisdictions. The Saskatchewan First Nations and Metis Children and Youth Action Plans must involve First Nations and Metis youth, and all levels of government to create holistic Action Plans that must include social and capital infrastructure projects.

These Action Plans are based on the principles of inclusion of First Nations and Metis children and youth, integrated services, involved communities and future focused.

Recommendation 8.12
This Commission recommends that the Implementation Commissioner be vested with the power and authority to monitor the development and implementation of the Saskatchewan First Nations and Metis Children and Youth Action Plans.

Conclusion

The Commission believes that justice must be returned to the community if we are to bring about long-term change. This requires a Declaration between jurisdictions to enable leadership to create plans that will ensure justice is returned to the community. The present youth justice system operates without meaning for the majority of young persons subjected to it. Community justice requires that a community become responsible for its children and youth, and makes children and youth feel they belong and have an investment in the future.

Policy makers and leaders must affirm the importance of family, peers, school and community in child and youth development. The first step is to reframe the way public policy is developed. Public policy must put the needs of children and youth first and then be viewed through a First Nations and Metis "lens." Second, policy must be created that supports and strengthens family in order for family to effectively participate in any prevention, reintegration or justice activity. Third, all governments must engage in long term planning that takes into account the effect policy will have on children and youth.

This report calls for a Saskatchewan First Nations and Metis Children and Youth Declaration and Action Plans that transcend all jurisdictions in the best interests of our future. These plans are inclusive of children and youth, holistic and integrated, community based, community involved and future focused. Everyone can make a difference.

ABORIGINAL JUSTICE IN SASKATCHEWAN 2002-2021: THE BENEFITS OF CHANGE

A REPORT PRESENTED TO
THE COMMISSION ON FIRST NATIONS
AND MÉTIS PEOPLES AND JUSTICE REFORM

PREPARED BY
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FEBRUARY 2004

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Finally and importantly, we are grateful to the Commission members for their confidence and support—and for giving us the opportunity to pursue a vision of justice reform based on a careful evaluation of the available evidence, of projections over the next twenty years, and of the costs and benefits of inaction and of intervention. If we cannot pretend to do anything like justice to the extensive literature, accumulated data, and diversity of experience in the justice system, we have attempted to tell a story that may make some reforms possible. The overarching aim throughout has been to contribute to an ongoing process of better serving justice in general and First Nations and Metis peoples in particular, and to support the Commission vision to bring about "*Meyo Wahkotowin*—One Community—working together to create a healthy, just, prosperous and safe Saskatchewan."

EXECUTIVE SUMMARY

Convened in November 2001 to address systemic and other discriminatory practices that impact First Nations and Metis peoples' experience in the criminal justice system, the Commission on First Nations and Métis Peoples and Justice Reform is mandated to identify efficient and effective means of improving the administration of justice; better reflecting the cultures, values, and strengths of Aboriginal communities; and promoting co-operation across communities and disciplines for a healthy, safe Saskatchewan. This report provides statistical and other information on the benefits of change and the cost of doing nothing in relation to crime, victimization, First Nations and Metis peoples and the justice system—information on which the Commission may base its own recommendations for reforming the justice system.

Our report shows, in tables, figures, and narrative form, that Aboriginal participation in the Saskatchewan justice system is growing, that it is becoming more costly, and that the costs will increase substantially if nothing is done—and, very importantly, that all members of the Saskatchewan community can benefit from changes to the justice system. In particular, the report documents costs of fulfilling provincial responsibilities for the administration of justice under section 92 of the *Constitution Act, 1982*: policing, courts, prosecutions, legal aid, corrections, youth justice, victim services, and alternative measures (with projections from best to worst case scenarios and with clear distinctions along gender, age, abilities, and other lines, where possible).

Instead of focussing only on problems (and their solutions), the report highlights opportunities for positive outcomes benefiting all and helping to realize the Commission vision of "*Meyo Wahkotowin*—One Community—working together to create a healthy, just, prosperous and safe Saskatchewan." It not only elaborates the costs of doing nothing under status quo conditions, but also considers the costs and benefits associated with proactive and preventative measures, investments in collective, community solutions and alternative measures that go beyond the adversarial and punitive: the value of education, community capacity-building, or programs for youth and inmates, for instance, and their implications for larger policy decisions. That is, initiatives within the status quo situation that are already directed at change are taken into account—initiatives like the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety: building community ownership and capacity; developing partnerships; adapting the criminal justice system to recognize and respect values of Aboriginal peoples and meet needs for safety and security; and improving service effectiveness to all stakeholders.

The report also addresses some persistent barriers to change:

- in the ways justice has been conceived.
- in the law's role in racialization and racism.

- in the persistence of myths and stereotypes inside and outside the justice system.

- in the construction and perpetuation of the "Aboriginal problem."

- in over-investments in a thriving justice industry.

- in under-investments in strengthening communities.

- in the ways research has been conducted, conveyed, and interpreted.

In particular, the report addresses an over-reliance on professional expertise and so-called hard data or quantitative measures that leave qualitative measures off the map (or relegate them to secondary status), and with profound consequences for the perceptions and decision-making of the general public and policy makers. And belief that the "hard" data describe reality in neutral terms obscures how the data actively produce the very "problems" they claim exist "out there" in the real world — much as the notion of terra nullius justified "the discovery" of North America and the dispossession of its peoples. Demographic representation, for instance, remains constrained by dominant forms of data collection, including what is and is not collected, but also by the colonial categories and simplifications of complex identities (collapsed into the crude calculus of Aboriginal/non-Aboriginal, for instance). And when financial accounting measures dominate, a range of benefits (less tangible but no less real in people's lives) fail to register in the benefit-cost calculus. To counter these dominant reporting trends, the report considers multiple categories of identity wherever possible (ethnicity, age, gender, abilities, education, etc.) and qualitative as well as quantitative measures, stories as much as statistics, to assess cost-benefits.

The report draws heavily on existing research on crime, victimization, First Nations and Metis peoples and the justice system, though it cannot presume to anything like comprehensiveness. Instead, the report builds on what we already know from the Canadian record and what we can learn from experience in the United States in order to uncover effective, efficient, and financially responsible means of addressing systemic discriminatory practices and other barriers to the fair and equitable administration of justice. So as not to repeat errors of the past, the report identifies lessons learned from the U.S. "war on crime" impacting disproportionately on youth and African Americans and producing financial crises for legislatures and crippling consequences for the socio-economic life of communities, cities, and states. We can learn too from current U.S. justice reinvestment.

In addition to building on academic publications and a number of important reports and commissions from the 1960s, the report benefits greatly from statistics produced and published by these authoritative sources:

- Canadian Centre for Justice Statistics (CCJS) at Statistics Canada

- Canadian Institute for the Administration of Justice

- Canadian Criminal Justice Association (CCJA)

- Correctional Service of Canada (CSC)

- Corrections and Public Safety (SK)

- Department of Social Services, Government of Saskatchewan

- National Crime Prevention Council

- Research Branch (Ottawa), Solicitor General of Canada

- Saskatchewan Department of Justice

- Statistics Canada

- Strategic Research and Analysis Directorate, Treaties, Research, International & Gender Equality, Indian and Northern Affairs Canada

After introducing the background to and purpose of the report, its scope, organization, and methodology, the report covers the following topics before presenting its conclusions:

- Popular myths and powerful realities.

- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).

- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.

- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).

- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.

- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.

- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.

- Estimates and projections (where available) of the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, educational and employment initiatives, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

Drawing on a broad range of resources, the report not only presents, wherever possible, a financially-based case for change, but also provides analysis of qualitative measures of the cost and benefits of the status quo and of alternative measures. At all times mindful of the special fiduciary relationship with Aboriginal peoples requiring the federal government to act in their best interests and the constitutional recognition and affirmation of Aboriginal and Treaty rights elaborated in Section 35(1) and Section 25 of the *Constitution Act, 1982*, this report is concerned to represent the findings so as to help enlighten the general public and decision-makers.

Recognizing Aboriginal and treaty rights is not a privilege but a constitutional fact to be defended by all Canadians because all our freedoms and privileges depend on such recognition. The general population of Saskatchewan as much as Aboriginal peoples remain beneficiaries of the treaties by which our relations and realities are defined. With these historical and constitutional facts as well as the costs and benefits of social cohesion in mind, the report is designed to galvanize action by making vivid the mutual benefits of change and the costs of doing nothing and wasting opportunities, the costs of adding the investment in the Commission to the already substantial costs of failing to act and maintaining the status quo. In other words, we address widespread myths and fears about Aboriginal participation in the justice system, distinguish public perception and facts, and thereby aim to enrich public debate, facilitate decision-making, and motivate meaningful change.

1.0 INTRODUCTION

1.1 Background

> **The statistics leave no doubts as to the very sad state of aboriginal economic and social development today. If one is not moved by these statistics, one might instead be moved by the high and rising cost of the status quo. Failure to improve the situation will extract a large and rising charge on the public purse.** (McCallum, 1997)

The Report Industry from 1960s

A well-documented history of over-representation of Aboriginal peoples in the criminal justice system, high levels of violence and victimization, together with the tragic deaths of two Aboriginal men in January 2000 and the experience of abuse by police officers of a third man prompted the formation of the Commission on First Nations and Métis Peoples and Justice Reform in November 2001 with a mission to consult, build relationships and respect, recognize successes, and make recommendations for justice reform.

As long ago as 1964, a Projects Committee of the Canadian Corrections Association began addressing the special legal problems of Aboriginal people in Canada. Among the extensive list in the association report (1967), many of the following recommendations resonate still:

- end non-academic uses of residential schools.
- clarify treaty rights and jurisdictional responsibilities.
- delete Indian Act provisions on liquor control.
- expand the Indian constable system.
- provide legal aid and counsel to clarify pleas, processes, and provisions.
- expand probation and parole services.
- improve correctional services to Metis people.
- increase support for private after-care agencies and Friendship Centres.
- increase education on criminal law.
- hire Aboriginal personnel in justice services.

Arguing that only "joint and sincere action" would change the status quo—what the Union of Ontario Indians called the "unimaginable deterioration in the life" of a "once proud and industrious people"—the report also recommended increased expenditures on housing, education, health, employment counselling and placement, and recreation "to meet the massive backlog of social and economic problems which contribute to the difficulty with the law experienced by [Aboriginal] people."

Ten years later a study of Saskatchewan's correctional system revealed the then shocking record: treaty males were 25 times more likely to enter corrections, those over 15 years of age 37 more likely, and treaty women 131 times more likely than the non-Aboriginal population (Hylton, 1983). And the 1977 McGuigan Parliamentary Subcommittee *Report to Parliament on the Penitentiary System in Canada* offered this crushing indictment of the prison system as the epitome of injustice and a "university" where "cruel lockups, isolation, the injustices of harassment" make "non-violent inmates violent, and those already dangerous more dangerous." In short, the report distinguished the rhetoric of justice and the realities of injustice concluding, "Society has spent millions of dollars over the years to create and maintain the proven failure of prisons," its comprehensive failure to correct the offender and to protect society clear in recidivism rates as high as eighty per cent (qtd. in Jackson, 1988a).

In 1988, on behalf of the Canadian Bar Association, Professor Michael Jackson (1988b) argued that such statistics "are so stark and appalling that the magnitude of the problem can be neither misunderstood nor interpreted away." And his report cautioned that the disproportionate representation of Aboriginal peoples in the prison population was growing and would continue to grow at a disturbing rate without radical change. Yet investment in the justice industry has continued to grow with insufficient regard to the costs and benefits of that industry—or to who bear the costs and who reap the benefits.

From Blaming the Victim to Examining Structures of Inequality

In spite of dire warnings and clear directions in decades of reports, inquiries, studies, and educational initiatives, the experience of First Nations and Metis peoples at the hands of the justice system remains an urgent concern. That experience, "the product of historical processes of dispossession and cultural oppression," according to the Royal Commission on Aboriginal Peoples (RCAP, 1996a), "casts a long shadow over Canada's claim to be a just society." If there have been significant changes in emphasis over the years, moving discussion away from blaming the victim or inventing criminal pathologies of Aboriginal individuals or communities to a concern with the structures of social inequality embedded over the decades in the legal system, the result has not always been as devastatingly explicit as a report for the Australian Human Rights and Equal Opportunity Commission on "the use of violence against Aboriginal youth as part of an institutionalised form of racial violence" and "part of the routine practices of policing" (qtd. in McNamara, 1992).

Though the 1967 Canadian Corrections Association Report called for "a massive educational campaign" to break up a vicious cycle of myth-making perpetuating stereotypes, concern with social indicators (poverty levels, employment and education, family breakdown, substance abuse, housing, mental and physical health, suicide rates) has often become only a subtler form of the traditional colonial practice of pathologizing individuals and communities. And the problem is aggravated by the tendency among the marginalized and oppressed to internalize and enact dominant myths and stereotypes in a "self-validating" circular process that confirms the bias of mainstream perceptions.

If stereotypical views of Aboriginal peoples are disappearing from official government policy, they remain powerful "in the popular imagination" and influential "in shaping decisions of the police, prosecutors, judges and prison officials" (Jackson, 1988b). And the media have often been guilty of over-representing Aboriginal perpetrators of crime while under-representing them as victims, or otherwise misrepresenting and reducing Aboriginal peoples to caricature or stick figures (Lawrence, 2002) severed from their histories and from meaningful futures.

In 2001, for instance, John Stackhouse's fourteen-part series of **investigative** reports on "Canada's Apartheid" (published in *Globe and Mail* between 3 November and 15 December 2001) aimed to illuminate the social realities of so-called Aboriginal and non-Aboriginal relations. Stackhouse began in Saskatoon, welcoming readers to "Harlem on the Prairies." His piece has much to tell us about the state of the nation, how Canada understands its divisions and diversities, where responsibilities lie, the potential for mutual or collective understanding, and the material consequences of disciplines of knowledge, discursive practices, and identity categories for producing, policing, or dismantling and superceding boundaries that control access to social, cultural, legal, and economic spaces.

Readers might reasonably have expected that Stackhouse would enlighten them on the historical and legal facts of treaty federalism (Henderson, 1994a; 2003) the history of colonization, the racial and spatial logic of the Indian Act (Razack, 2002), the jurisdictional complexities that leave off-reserve and Metis peoples unprotected by the fiduciary relationship with Aboriginal peoples, and the particular struggles of "othered" groups (that is, those represented as different, as "they" and therefore excluded from the "we" of the dominant culture). Instead, Stackhouse perpetuates stereotypes of a "poor and polarized" province. Casting himself as an intrepid traveller in Canada's internal *terra incognita*—"a square mile of reckless inebriation"—he takes readers to a strange and dangerous place of the barely or unbearably human (Aboriginal) "other."

In place of historical analysis of the legal production of disadvantage and criminality, Stackhouse recirculates views that current realities are attributable to Aboriginal people themselves because they "can't cope with the transition from isolated reserves to a multicultural city." Stackhouse accepts at face value the evidence of his informants without attending to the history of relations of domination that have helped shape identities and geographic (and other) isolation and pathologies of disadvantage, while failing to see the evidence before his eyes of powerful models of achievement, of the invaluable difference of the Aboriginal community, enriching what we do here in Indian country. Nor does Stackhouse acknowledge his responsibility for producing the "realities" he describes in his highly selective mapping—or for doing so much damage to relations among peoples.

Had he cared to look, he might have seen, for instance, the appointment of Judge Mary Ellen Turpel-Lafond (and of Judge Gerry Morin), economic development initiatives, a flourishing urban reserve (established in 1988) increasing employment and reducing poverty, Aboriginal partnership agreements, a talented and distinguished Aboriginal cultural community, enhanced education levels and flourishing programs at the University of Regina and the Saskatchewan Indian Federated College (now the First Nations University of Canada). He might also have seen a 10 per cent Aboriginal student population at a University of Saskatchewan committed to *Renewing the Dream* by playing a lead role in Aboriginal education and scholarship, integrating Indigenous Knowledge, and partnering with Aboriginal communities. And the University of Saskatchewan is indeed home to many of the finest Aboriginal scholars and finest Aboriginal institutions, programs, or curricula in the country.

Instead, his "investigative" practice, in a series of skewed dispatches from the "front," ignores its own neo-colonial presumptions, priorities, and methods. It ignores what McIntyre (2000) calls "studied ignorance" and "privileged innocence" that uphold the status quo, assigning power, privilege, access to elite institutions, and hence the capacity to shape "realities" and "truths." Such privilege allows its holders not to know or think about systemic inequality or their own role in sustaining inequality; they can then "dissociate themselves from, and presume themselves innocent of, the cumulative appropriations and dispossessions that define systemic relations of domination." It ignores the ways that Aboriginal peoples, as RCAP (1996a) puts it, have been "legally and politically surrounded in Canada — they are fenced in by governance they did not discuss, design or desire."

It is precisely the racialized urban space that Stackhouse naturalizes that makes the "Aboriginal problems" so visible and so readily documented. Though the "pain and ugliness over on the non-Aboriginal side of the road is less visible, less publicized, less a topic of scholarly debate and official scrutiny," it is, argues the chair, United Nations Working Group on Indigenous Populations, "nonetheless there, a mirror image of the spiritual erosion on Indian reserves" (Daes, 2000). But the problems on the mainstream side of the road slip imperceptibly under the radar screen of social scrutiny. Meantime, focussing only on the surface appearance of incomprehensible conditions, the repeated cycles of violence and victimization, abuse and self-abuse, in a "crime-ridden native community" is enough to make attending police feel "their blood boil." One former police officer spoke on condition of anonymity of a frustration so profound that "you could kill someone."

Not only are people pushed to dangerous levels of frustration by conditions they cannot comprehend, but they seem doomed to perpetuate or aggravate those conditions. Such surface concern with social indicators (as Stackhouse exemplifies) diverts attention from the ways that the justice system has itself been the source of domination and oppression. "There can be no full solution to the 'problems' of 'Indians,'" argues Monture-Angus (1999), "if the role that law has played in our oppression and colonization is immune from scrutiny and remedy." To ignore the role played by the law in establishing and enforcing definitions of race as well as racial stereotypes and discrimination (Backhouse, 1999) is to defer indefinitely meaningful reform to the administration of justice and the realization of Aboriginal aspirations.

McNamara (1992), La Prairie (1990), and Brodeur, La Prairie, and McDonnell (1991) have likewise urged careful treatment of social indicators. In particular, they have argued that "over-representation" as a conceptual tool to address injustice over-generalizes, naturalizes, and simplifies "the problem." In other words, over-representation depends on representational presumptions that unfairly racialize that is, categorize and generalize on the basis of a single feature that is presumed to be defining Aboriginal people in a story that is bristling with statistics and appeals to objectivity. In this fashion domination legitimates itself, silencing and sequestering the dominated and re-writing them as bearers of deficiency and dysfunction. Thus, the tool of "over-representation" contributes in turn to broad characterizations of "cultural divides," to insufficient analysis of the meaning of these privileged justice indicators, to failures to hold the system to account and to a diminished ability to intervene and change the way things are done.

In the meantime, the allocation of resources continues to support lucrative expertise to define and address problems and solutions **for** Aboriginal peoples who continue to be excluded in large measure from control of the process.

As Hylton (1994) has argued, "Despite its high costs, this 'doing for' approach has never worked very well. . . . In fact, this policy has failed, and it has failed miserably." By contrast, efforts at Aboriginal programming are proving successful and include a range of benefits (Aboriginal staffing, economic benefits to communities, greater client satisfaction, reduced need for intervention, and even cost savings) and this despite problems with stable, long-term funding, sufficient infrastructure and resources, issues of access, and even a climate of mistrust. If the justice system resists change, it risks losing public confidence: "justice can be part of the problem or part of the solution" (Hylton, 1994).

Although studies of over-incarceration and systemic discrimination have been "done to death," as Barkwell (1991) has argued, "As long as the planners and policymakers of the justice system are allowed to rationalize its failures by pointing to, and blaming, large and vaguely-defined 'social problems,' and claim that these are factors beyond control, they will continue to sidestep questions of relevancy and will continue to feed the syndrome of blaming the victim." And there are dangers in isolating justice reform as the answer to the "problems" in Aboriginal communities, not least of which is that the "solutions then become aboriginal control over justice without a clear delineation of the problems this approach can address and those it cannot" (Brodeur, La Prairie, & McDonnell, 1991).

Poverty as Participation

> **Poverty and powerlessness have been the Canadian legacy to a people who once governed their own affairs in full self-sufficiency.** (Hamilton & Sinclair, 1991)

It has long been known that poverty is a major reason for Aboriginal participation in the justice system (Jackson, 1988b, for instance), though it has been less obvious that the law has itself supported the impoverishment of Aboriginal peoples by constraining their use of land, labour, and resources and *criminalizing* behaviours in attempts to "civilize" Aboriginal peoples. From the Royal Proclamation of 1763 through the Constitution [British North America] Act, 1867, Indian Acts and Indian Advancement Act, 1884, to the Constitution Act, 1982, the regimes of ownership, development, and regulation have cut far deeper than the plough blade specified in the treaties. Instead, federal policy has supported a concerted assault on a whole way of life so that the plight of Aboriginal peoples "is by far the most serious human rights problem in Canada" — one that "can only continue to tarnish Canada's reputation" if no solution is found (Canadian Human Rights Commission; qtd. in Gosse, 1994).

The law enforced policies and bureaucratic and other controls (with significant discretionary powers) on everything from residence and movement, from timing and mode of hunting to definitions of leadership and governance and provision of electoral instruments to specifying how and when leaders could be removed, imposing involuntary enfranchisement (at expense of status), proscribing religious ceremony and cultural activities, and imposing residential schools (Miller, 1994). Similar policy interventions sustain to this day something like legislated poverty in terms of the "moderate livelihood" allowed for the exercise of Aboriginal treaty rights (*R. v. Marshall* [1999]).

Such socio-economic inequities mean social exclusion, health deficits, increased risks, and reduced access to mainstream opportunities and institutions (Lynch, Kaplan, & Shama, 1997). And the situation is aggravated by jurisdictional disputes that leave gaps in services that further isolate and marginalize Aboriginal peoples, and especially the majority residing off-reserve and in urban settings who constitute "the poor man of the Canadian constitution" ill served by federal programming (Chalifoux & Johnson, 2003). Or those with disabilities who are given the "'ping pong' treatment, shuffled from one agency to another" (Durst and Bluechardt, 2004). All in all, the effect has been to undermine or erode social cohesion and transform independent nations into wards of the court incarcerated disproportionately in the provincial correctional system for "minor infractions" that "reflect social, rather than criminal, problems" (CCJA, 2000).

Correcting Deficits in Political Action and Public Understanding

> **One cannot erase the history of colonialism, but we must, as an imperative, undo it in a contemporary context.** (Turpel, 1994)

In these circumstances, deficits in political and other responses to report recommendations (and their implementation) have remained as striking as the deficits in public understanding. In particular, there remains a serious deficit in public knowledge about Aboriginal peoples, Aboriginal and treaty rights, colonial history, fiduciary responsibility to Aboriginal peoples, and constitutional protections afforded by section 35 of the *Constitution Act, 1982*. Without such understanding, as the Aboriginal Justice Inquiry of Manitoba (Hamilton & Sinclair, 1991) makes clear, there can be no shared commitment to justice. In its 1991 Report, the Law Reform Commission of Canada likewise defended its departure from the general principle that "criminal law and procedure should impose the same requirements on all members of society" not on political grounds but by virtue of "the distinct historical position of Aboriginal persons" that entails a "different constitutional status."

In this context there is a special obligation to be clear about the specificities of the problems (McNamara, 1992) for different Aboriginal groups and for differentially affected members of the groups (women, youth, people with disabilities, for instance). There is an obligation to identify and interrogate racialization (the process whereby peoples are constructed on the basis of a single "defining" feature as different and inferior and whereby they are encouraged or required to organize and assess their experience) and the racist and other forms of differential treatment across and within communities.

There is an obligation to expose such forms of oppression that have limited people's freedoms until "External oppression becomes self-oppression. The victim of oppression travels the road of life thinking at every crossroads 'Not that way,' until the result is immobility, inaction, and self-isolation." The effect of internalizing constant messages that they are "backward, ignorant, weak, insignificant" is that people can come to believe, ironically, that they are "very, very fortunate to have been colonized!" (Daes, 2000). And there is an obligation to pursue the right and just outcomes—and not to be overwhelmed by either the enormity or the urgency of the issues.

There is an obligation to probe the self-evidence of the "hard data" on crime rates, explain how criminality is construed, question the efficiencies (economic and other) of processing people in the justice system, and promote reforms that go beyond minor adjustments or accommodations within the justice system. Of course, the notion of reform itself necessarily entails "some degree of preservation of the subject matter of the reform exercise" (W. H. Hurlbert, 1986; qtd. in McNamara, 1992). Fundamental change requires more than adding on programmes like cultural sensitivity training or substituting Aboriginal for non-Aboriginal personnel. It requires respecting Aboriginal law and rethinking legal realities, relations, and rationalities (and the many irrational assumptions about variously constructed "others" on which they have been based)—their legacy and legitimacy inside and outside the justice system. Only then will legislatures and other constituencies be able to break fully with the presumptions and paternalisms of the past.

It is important to acknowledge too that demographic representation remains constrained by mainstream data collection practices, ensuring particular patterns of inclusion and exclusion, as much as by colonial categories and simplifications of complex identities (collapsed into oppositions between Aboriginal and non-Aboriginal, for instance). Recognition and jurisdiction of Metis peoples has been a long struggle in the face of the artificial boundaries of identity, though the Metis Act, 2002, importantly recognized the economic and cultural value of Metis contributions to the province of Saskatchewan and affirmed the province's commitment to working with Metis peoples on governance, land, and other issues. To counter dominant reporting trends, it is vital to address multiple categories of identity (age, gender, abilities, education, etc.), to attend to stories as well as statistics, and to consider why some crimes are reported and others not.

Instead of perpetuating myths that support fears, Monture-Angus (1995) argues, "People must stop fearing the possible creation of many Aboriginal criminal codes. What Aboriginal people seek is the acceptance that there can be more than one valid and legitimate way to address disputes and wrong-doings. . . . This idea of too many criminal codes is also a myth that is perpetuated by those who have been unable to understand that there are many paths to follow to arrive at a just society."

In that regard, it is important to recall the complex management of jurisdiction within the province of Saskatchewan as well as across federal, provincial, municipal, and First Nations jurisdictions. If the federal government enacts law under section 91 of the *Constitution Act, 1982*, and manages policing, corrections, and parole functions under the Solicitor General of Canada, while other justice functions (federal courts, appointment of federal judges and superior court judges in provinces, community justice and crime prevention programs) come under the Federal Minister of Justice, under section 92 of the *Constitution Act*, the province is responsible for the administration of justice in Saskatchewan to ensure "social stability, and by extension, contribute to a high quality of life for citizens." To achieve these goals, the justice system needs to be fair and relevant as well as "trusted and understood" (Saskatchewan Justice, 2002).

The provincial responsibility includes prosecution of *Criminal Code* and *Youth Criminal Justice Act* offences, administering the courts, legal aid, and provincial policing contracts with RCMP, appointing provincial court judges, administering adult custody sentences of less than two years, and all youth sentencing, as well as administering public prosecutions, community justice, alternative measures, supervision, victims services, policing and crime prevention programs. Under the *Indian Act*, First Nations governments may enact band bylaws to regulate the community and, with federal and provincial agreement, administer justice services, while municipal governments are mandated to provide policing in larger centres and administer traffic and municipal by-law courts. In supporting a healthy and safe community, even health and school boards as well as community organizations play a role in terms of addictions and mental health programming.

Further, there is an obligation to be clear not only about what the research and data allow us to claim but about what they *require* us to claim about the historical and legal facts of Aboriginal and treaty rights and about the treaties of which we all—Aboriginal and so-called non-Aboriginal—remain beneficiaries and by which our relations are defined. Recognizing Aboriginal and treaty rights is not a privilege but a constitutional fact to be defended by all Canadians because all our freedoms and privileges depend on such recognition. There are no winners or losers in doing the right thing, only winners in sharing the power to redefine the administration of justice and dissipate the fears that have driven so much public debate and policy decision-making—fears, for instance, even among First Ministers "that their own limited sovereignty and jurisdiction would be jeopardized if the aboriginal right to self-government ever became entrenched as constitutional law" (Bear Robe, 1991).

And it is important to acknowledge and build on initiatives that are making a difference—initiatives like Saskatchewan's *Metis and Off-Reserve First Nations Strategy* and the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety (2003):

- building community ownership and capacity to address the factors associated with offending and victimization.
- developing partnerships.
- adapting the criminal justice system so that it recognizes and is respectful of the values of Aboriginal peoples and meets needs for safety and security.
- improving the effectiveness of services to victims, offenders and communities.

Imposing/Interpreting Criminal Codes

They say that
The wheels of "Justice",
They grind slowly
Yes we know.
But they grind
And they grind
And they grind
And they grind.
It seems like they grind
Forever. ..

(Anishnabe Elder, Art Solomon; qtd. in RCAP [1996a])

Crowe (1994) spoke for many when he expressed frustration about a system many feel was "wrongly forced" on peoples who "welcomed European settlement" and made no attempt to force their own system of law and justice on them. Yet that Aboriginal system was so much more cost-effective. It asked that "offenders repay the community rather than their wrongs ending up a financial burden to the community. And when I say a financial burden, I mean a financial cost in every one of your pockets." Even worse, "We seem to find ways to run up our social costs, but we never find resources to correct the problem." What Crowe (1994) demanded was "an investment in the future and a way to lower some of the continuing costs for everyday law enforcement and for correctional centres. In Indian country we don't want handouts. We don't want welfare. We want economic opportunities."

The problem, argues Henderson (1994b) is that interpretation of the national Criminal Code enacted in 1892 ignored a treaty order that made no delegation to federal authority. Rather federal authority itself derived from the prerogative treaties. Invested in the notion of "impersonal and neutral laws," the Criminal Code nevertheless represented "the cultural interests of the British immigrants and rejected the treaty order." Empowering Indian agents to act as Justices of the Peace under section 107 of the Indian Act empowered them "to more effectively implement the purposes of the legislation and the policies of the Indian Affairs Branch of the Government of Canada" (Morse, 1982; qtd. in McNamara, 1992).

Confronting an Alien Order

> **In order for a society to accept a justice system as part of its life and its community, it must see the system and experience it as being a positive influence working for that society. Aboriginal people do not.** (Hamilton & Sinclair, 1991)

Despite such concerns voiced over the decades, the justice system remains today as alien to many Aboriginal peoples as it did in 1885 when chief Poundmaker pronounced the law "a hard queer thing," adding, "I do not understand it." And that alienation from mainstream law continues to be viewed by the mainstream as primitive obtuseness or even inherent criminality. According to Hamilton and Sinclair for the Aboriginal Justice Inquiry of Manitoba (1991), justice for Aboriginal people is not a matter of enforcement and punishment but a matter of restoring "the peace and equilibrium within the community" as well as reconciling "the accused with his or her own conscience and with the individual or family who has been wronged." From their point of view, "the essential problem is that the Canadian system of justice is an imposed and foreign system. In order for a society to accept a justice system as part of its life and its community, it must see the system and experience it as being a positive influence working for that society. Aboriginal people do not." Especially damning was the conclusion that the justice system sanctioned oppression that produced the "current state of social and economic distress" that is the cause of further discrimination in the justice system. This, they add, "is no less racial discrimination; it is merely 'laundered' racial discrimination."

On the evidence of chief Allan Ross of Norway House, the face of "lady justice" presented to Aboriginal people is much less benign than that experienced by other citizens and residents of Canada:

> **Anyone in the justice system knows that lady justice is not blind in the case of Aboriginal people. She has one eye**

> **open. She has one eye open for us and dispenses justice unevenly and often very harshly. Her garment is rent. She does not give us equality. She gives us subjection. She makes us second class citizens in our own land.** (Hamilton & Sinclair, 1991)

As one speaker addressing the Commission on First Nations and Métis Justice Reform in La Loche put it, "When I talk about justice, it has to be looked at with respect to not just lawbreaking. The concept of justice in Dene means a way of life, it means responsibility, it means child rearing. . . . There is no word for justice in Dene." For one Elder the justice system has "no heart" for healing and "brings pain for First Nations people," while jails are "anti-spiritual centres for the teaching of disrespect and breaking up families." And for another Elder, jails simply repeat the abuse of the residential schools (Commission [2003c]).

From the perspective of the Canadian Criminal Justice Association (2003), the evidence is overwhelming on Aboriginal people's overrepresentation in the justice system and their persistent alienation from a foreign and inaccessible system marked by "overt and systemic racism." The costs, "in both human and fiscal terms," prove to be "not only exhorbitant, but also spiralling."

Distinguishing Fact and Fiction

> **That two-thirds of the people living off the avails of [treaties] wish they had never been struck is an indictment of Saskatchewan's education system and its political leadership.** (Treaty, 2003)

If 76 per cent of Americans admit to fearing violence (Adams, 2003) and typically list crime high on their list of concerns (Greenwood, Model, Rydell, & Chiesa, 1998) despite declining crime rates (Belden Russonello & Stewart, 2001), the result of such perceptions has been predictably divisive and simplified calls for legislatures and judiciaries to be "tough on crime," show "zero tolerance," incarcerate, and fill boot camps. Fear is indeed a powerful indicator of punitiveness and "high levels of fear" correlate with "*negative* views of the police and the courts" (Roberts, 2001). Although recent studies show Canadian values diverging from American values (Adams, 2003) and fewer Canadians report fear of crime (27 per cent) than the 29 per cent in 1970 (Roberts, 2001), Canadians—and their media—have not entirely avoided similarly fearful claims about escalating crime and simplified discourses drawing clear boundaries between law-abiding and criminal classes, good guys and bad guys, "us" and "them." And such thinking was evident in 2003 public debate around the municipal and provincial elections in Saskatchewan with opinion polarized between competing conceptions of crime and criminality—who are criminals, why they resort to crime, and who are the "real victims"—and different understandings of appropriate remedies.

If people could not agree on the problems—the sources, nature, or extent of crime or the relation between crime and corrections—they were no closer to consensus on the solutions. In the case of First Nations and Metis participation in the justice system, opinion divided between those who appealed to the sacred promises of treaty and "the honour of the Crown," arguing that we cannot understand such participation separate from a colonial history of inequity and a current reality of systemic discrimination, and those who prefer to forget the past, subscribe to a myth of meritocracy, overlook their own privileges, and dismiss what they call "race-based" equality; between those who demanded increased punishment and policing, incarceration, and boot camps and those who called for alternative measures and new forms of policing, including community policing, new ways of doing justice to prevent behaviours, divert people from the justice system, and address the root causes of crime.

The prominence of crime in media coverage of the elections is perplexing when crime has never figured as an important social issue for Canadians: since the late 1980s, the percentage of the public reporting crime as the most important problem has ranged between 2 and 5 per cent compared with 58 per cent focused on child poverty and 69 per cent on health. And Canadians are increasingly sympathetic to alternative rather than punitive measures: a 2000 study of parole, for instance, showed 85 per cent support (Roberts, 2001). But myths also drive public debate and fears erode public confidence in the administration of justice. A 1994 study, for instance, showed that 68 per cent of Canadians believed that crime had increased in the previous five years, when statistics recorded a 5 per cent decrease in 1994, the third such decrease in a row (Roberts, 2001). Though property crimes represent 44 per cent, offences such as mischief, disturbing the peace, and failure to appear in court represent 43 per cent, and violent crime only 13 per cent of crime in Saskatchewan, it is important to concede that violent crime rose 8 per cent in 2001 and is 300 per cent higher than in 1981 (Saskatchewan Justice and Corrections, 2001).

But we can learn from the United States experience of negotiating competing views and visions of crime and justice. In particular, we can learn from hard lessons learned about the excessive costs without related benefits of the "war on crime" that has disproportionately impacted on youth and African Americans. That policy has also produced crippling financial burdens for communities and state legislatures as well as dysfunctional communities. The effect is that the concerted "war on crime" has been reconstituted as a determination to be "smart on crime" and reinvest in justice (Butterworth, 2003).

And from Aboriginal perspectives, the debate about law and order in Canada has been especially paradoxical in light of mainstream inclinations to disregard or disdain such legal documents as the Treaties, their failure to live up to the promise, spirit and intent of legal decisions, and their ignorance of the substantial benefits accruing to all signatories. As a Saskatoon *Star-Phoenix* editorial pronounced, "That two-thirds of the people living off the avails of those agreements wish they had never been struck is an indictment of Saskatchewan's education system and its political leadership" (Treaty, 2003).

In order to respond to public backlash against Aboriginal rights, the Commission is challenged to address stereotypes, myths, and fears that in the face of overwhelming statistical and other information persist in structuring social relations between and among communities. As recently as November 2003, such backlash was vividly registered in a Centre for Research and Information on Canada finding that 49 per cent of Canadians think "few or none" of Aboriginal land claims have merit and 62 per cent of Saskatchewan people polled believe that it would be better to do away with treaty rights and treat Aboriginal peoples "the same" as other Canadians.

1.2 Purpose

Galvanizing Change/ Defining Mutual Benefits

> **Canada is a world leader in many fields, particularly in the areas of progressive social policy and human rights. Unfortunately, our country is also distinguished as being a world leader in putting people in prison.** (R. v. Gladue [1999] 2 CNLR at para. 52)

In this context this report is designed to support the mandate of the Commission on First Nations and Métis Peoples and Justice Reform (and all those who contributed to consultations and roundtables) by presenting the evidence to negotiate competing versions of and visions for the criminal justice system, competing versions of the nature of the problem and its solution, and redefine justice for all.

This report records what we already know, the massive evidence of studies, reports, and commissions, **and** how readily people forget or fail to act. It recalls an enormous capacity to act in defiance of knowledge—and to rationalize that capacity by finding the evidence incomplete, overwhelming, or otherwise insufficient to merit immediate action. This capacity is aggravated by what has been called the new racism or democratic racism, an insidious form that remains invisible to those in the dominant culture. Democratic racism, according to Henry and Tator (2002), "arises when racist beliefs and behaviours remain deeply embedded in 'democratic' societies. Obfuscations and justifications are deployed to demonstrate continuing faith in egalitarian ideals, even while many individuals, groups, and institutions continue to engage in systemic racist practices that serve to undermine those ideals." Hence, investments in equality and justice "*conflict* with but also *coexist* with negative feelings about minority groups and discrimination against them." Further study becomes an easier option than policy and other change, while appeals to the (mainstream) bottom line, to fiscal fairness and responsibility, dignify ignorance and exasperation.

With humanizing examples and contexts for its figures, the report aims to help address and even displace some dominant myths and current public backlash against "race-based" justice and "special rights" in favour of simplifications about equality before the law that studiously ignore an ongoing history of inequality experienced by First Nations and Metis peoples. Dominant Canadian myths of a welcoming, tolerant, and open multicultural society celebrating diversity have played their part in producing, permitting, and promoting such ignorance of the harsh realities of racialization and the disadvantage it rationalizes.

Similarly, the report addresses concerns that we cannot afford change. Instead, the report documents the enormous financial burden of the administration of justice and the benefits to all of change. Hnatiuk (1994) likewise probed debts and deficits, looking into a very expensive "mirror with many cracks" and detailing "the costs resulting from the lack of a just social system" costs that "no words, statistics, graphs, trend lines or numbers could adequately capture." Instead of commissioning yet more studies, reviews, and inquiries, the Department of Social Services has been working for change together with First Nations representatives, tribal councils, bands, and chiefs, breaking barriers and redefining boundaries.

By including gender, age, and abilities in the statistical and narrative representation, the report aims to make visible the effects of systems of domination (in addition to race and racism) impacting on individuals in the justice system. Only then can people help make sense of the figures and understand how/why they might be changed. People might find reason to change the way things are if they understood the role of poverty the growing disparity in social health indicators between Aboriginal peoples and the rest of Canada. While Canada's ranking in the United Nations Human Development Index (available on the UN web site) is an enviable one, the Strategic Research and Analysis and the Social Cohesion Network (2001) points out that the Aboriginal population would rank 48th in the world behind Panama. And this ranking despite increased levels of mainstream educational attainment (in addition to traditional knowledge) among Aboriginal people revealed in the Census Canada 2001 education statistics (Statistics Canada, 2003d).

That is, the report is designed to give a human face to statistics and to probe the justice system participation rates it documents so that the public and decision-makers can better understand their significance and intervene more effectively. People might demand change if they recognized that an estimated 75 per cent of children in custody have some disability (Green & Healy, 2003). Or if they knew that 90 per cent of Aboriginal women in federal prisons report a history of physical abuse and 61 per cent a history of sexual abuse (Elizabeth Fry, 1993). Or if they knew that participation in cultural and spiritual practices, Aboriginal employment and education programs, or community and emotional needs programming reduced recidivism (Sioui & Thibault, 2002). Or if they understood the damage and dysfunction caused by child welfare, foster care, forced adoptions, and residential schools to families, to people's addictions, and their capacities for intimacy and relationship-building, they might demand change now. Then we might all understand the Australian Aboriginal country and western song cited by S. Muecke in *Textual Spaces: Aboriginality and Cultural Studies* (1992):

But prison's nothing special
For any Nunga I know,
Cos the white man makes his prisons
Most everywhere we go.

To open minds and enrich debate, statistics are framed by some plain speaking from the Supreme Court of Canada and the authorities it cites in, for example, *R. v. Van der Peet* [1996] on the damage done to Aboriginal rights by "liberal enlightenment" thinking on which Canadian courts continue to rely (at paras. 18 and 19). Or in *R v. Gladue* [1999], where the Court is clear that, though Canada is "a world leader in many fields, particularly in the areas of progressive social policy and human rights," it is also "distinguished as being a world leader in putting people in prison," incarcerating 130 per 100,000, while the United States leads with the highest rates in the world at 600 per 100,000 (at para. 52). To redress the growing disproportion of Aboriginal people in corrections and systemic discrimination in the criminal justice system, the Supreme Court is clear that treating Aboriginal offenders fairly means "taking into account their difference" (*R v. Gladue* at para. 87).

With these instructions in mind, this report is designed to galvanize action by making vivid the mutual benefits of working together for change and the costs of doing nothing and wasting opportunities, the costs of adding the investment in the Commission to the already substantial costs of failing to act, of maintaining the status quo — and a **costly injustice system**. That system is costly not least in terms of the average annual cost of incarcerating inmates federally — in 2000-2001, $66,381 for each man and $110,473 for each woman — and for parole supervision $16,800 per offender (CSC, 2001).

The report also takes aim at the myth of the intractability of the "Aboriginal problem" — an intractability constructed and maintained by those with the power and the means but with insufficient will to change the way things are. As Elder Art Solomon told the Manitoba Justice Inquiry, "We have become the victims of a very vicious system which intends to keep itself going, but as long as I live I will speak against that obscenity" (Hamilton and Sinclair, 1991). In light of such concerns about interests in maintaining the justice industry by warehousing the product rather than eradicating the root problems, the report speaks to widespread misconceptions, myths, and fears about Aboriginal participation in the justice system, elaborates the history of such participation, and distinguishes public perceptions and documented facts in order to enrich public debate, facilitate informed decision-making, and motivate meaningful change.

1.3 Scope

This report provides statistical and other information on benefits of change and the cost of doing nothing in relation to crime, victimization, First Nations and Metis peoples and the justice system — information on which the Commission may base its own recommendations for reforming the justice system. The report shows, in tables, figures, and narrative form, the ways in which these costs are rising within the justice system in the province: costs of policing, courts, prosecutions, legal aid, alternative measures, corrections, youth justice, and victim services (with projections from best to worst case scenarios and with distinctions along gender, age, abilities, and other lines where possible).

Instead of focussing only on problems (and their solutions), the report highlights success stories and opportunities for positive outcomes benefiting all. It not only elaborates the costs of doing nothing under status quo conditions, but also considers **how** the costs and benefits associated with proactive alternative measures may be calculated: the value of education, community capacity-building, or programs for youth and inmates, for instance, and their implications for larger policy decisions. That is, initiatives within the status quo situation that are already directed at change are taken into account.

For demographic comparisons and cost projections, this report relies on Statistics and Census Canada definition of Aboriginal identity, supplemented, where appropriate, by information on the Registered Indian population, as defined by the Department of Indian Affairs and Northern Development (DIAND). Specific reference is made to age cohorts, representing those individuals in the youth offender age group (12 to 17 years of age), and adult offender age group (18+). The demographic profiles are broken down further by gender. First Nations are also divided into on- and off-reserve cohorts.

The Aboriginal population participating in the Canadian justice system generally and the Saskatchewan justice system specifically is defined and profiled. This profile includes a breakdown by age and gender cohorts, as well as across federal, provincial, and municipal jurisdictions, where possible.

The costs associated with participation in the Saskatchewan justice system (federal, provincial, and municipal) is linked to the general Aboriginal population data, broken down by the relevant cohorts (age and gender). The predicted participation rates of Aboriginal peoples involved in the Saskatchewan justice system is forecast over 20 years (or one generation), from 2002 to 2021, based on 2001 Census data and other sources.

The costs associated with the projections are made in constant 2001 dollars, based on minimum (2 per cent), medium (3 per cent), and maximum (4 per cent) inflation rates (or discount rates). That is, we are not using nominal rates that do not account for inflation and presume that a dollar is worth the same in twenty years as it did in 2001. The costs are broken down by Aboriginal, age, and gender cohorts by justice system participation (federal, provincial, and municipal). Where appropriate, minimum (conservative), medium, and maximum forecasts are made to provide a range of possible cost-projection options.

The implications of Fetal Alcohol Spectrum Disorders (FASD) and abilities issues, and the benefits associated with interventions such as restorative justice, increased education, and labour force development are discussed and evaluated — to the extent possible given the incompleteness and inconsistency of statistics and questions, for instance, about the accuracy of data so dependent on self-identification and on perceptions about what matters and what is valuable, or the lack of resources to test or treat disabilities, such as FASD.

The analysis concludes with a discussion of ways and means to facilitate effective cost-benefit analyses comparing alternative interventions and justice strategies given demographic and cost projections.

1.4 Organization

After elaborating the background to and purpose of this report, its scope and organization and before presenting conclusions, the report covers these topics in this order:

- Popular myths and powerful realities.
- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).
- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.
- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).
- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.
- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.
- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.
- Discussion on estimating and projecting the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, educational and employment initiatives, electronic monitoring, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

2.0 METHODOLOGY

> **We live in an era when everything must be measured. . . . But those measures were too often body counts. . . . We have no equivalent measures of life's quality or metrics of the human spirit. It's as if we see ourselves and those in the rest of the world only through the prism of fear and greed.** (Adams, 2003)

In the context of a Commission on First Nations and Métis Peoples and Justice Reform whose mandate derived from "the deaths of two Aboriginal men in January of 2000 . . . and the abuse of a third man endured at the hands of Saskatoon police officers" (Commission, 2003), it is important to recall that Aboriginal people in Canada (and elsewhere) have long been subjected to "expert" scrutiny and to undue burdens of proof. If we are not to repeat the errors of the past and offer insufficiently considered "solutions," we need to be sensitive to the power of information, to Aboriginal people's experience of institutionalization and intervention by external agencies, and to their measurement according to alien and coercive standards of accountability, evidence, rationality, justice, and value.

While Smith (1999) has highlighted the links between "scientific research" and "the worst excesses of colonialism," Neu and Therrien (2003) have identified accounting as one of the soft technologies that manage Aboriginal peoples by translating policy into practice. From their perspective, accounting "is not a passive recording of numerical information but rather a dynamic force in controlling events—and therefore populations—from a distance" (29). And, in the context of youth gangs, the Federation of Saskatchewan Indian Nations (FSIN, 2003) is equally sensitive to the power of mediation and accounting measures in developing its own Alter-Natives to Non-Violence Initiative as a strategic response to practices enumerating "the problem" and thereby justifying self-fulfilling police surveillance and criminal justice "solutions."

In the light of this history, it is especially important to reflect critically on models of accounting to ensure that they do not themselves reproduce the inequalities and injustices they are designed to help address. If financial indicators and statistics are given undue weight and if there is insufficient monitoring of key terms and assumptions, the findings (and the reasoning on which they are based) can operate to limit understanding of the issues as well as the usefulness of the findings. Indeed they may reinscribe the very mainstream understandings of who and what matters that lie at the heart of the status quo—and justify its perpetuation by offering mainstream solutions to so-called Aboriginal problems without listening to and learning from First Nations and Metis perspectives. Sensitivity to accounting practices is vital at a time when legislatures continue to rely on the much valued "independence" and "objectivity" of experts in developing public policy, when traditional accounting is itself in crisis (after Enron, Andersen, WorldCom, etc.), and when Aboriginal peoples are almost literally "studied to death."

When dealing with statistics and dollar values, then, it is especially important to monitor their sources—whose voices, values, and visions are respected, what data is disputed or disputable—and to supplement and translate these values into terms meaningful to all stakeholders. It is equally important to recognize that the financial measure is but one—if the most readily quantified and reportable—measure. And, if it is not to underplay or obscure other factors, that monetary measure should be considered in relation to an assessment of non-monetary costs. Though they are less readily quantified, the broader costs—human, social, cultural, health, educational, environmental—of doing nothing need to be assessed:

- costs to individuals, families, communities.
- costs to the seventh generation.
- costs of missed opportunities and overlooked First Nations and Metis courage, capacities, and contributions.
- costs of "stolen lives," to paraphrase Yvonne Johnson, a Cree woman and great-great-granddaughter of Big Bear currently serving her sentence for first-degree murder (Wiebe & Johnson, 1998).

The data is therefore placed in relation to the overwhelming evidence of the failures and biases of the justice system in a whole series of reports, justice inquiries, and royal commissions from the 1960s to the 1990s, from Canadian Corrections Association, *Indians and the Law* (1967) to *Locking Up Indians in Saskatchewan* (1976-77) to the *Report of the Aboriginal Justice Inquiry of Manitoba* (1991) to the Royal Commission on Aboriginal Peoples, *Bridging the Cultural Divide* (1996a). As Matthew Coon Come, former Grand chief of the Assembly of First Nations, has argued of the Report of the Royal Commission of Aboriginal Peoples (RCAP), "Its findings have never been discredited. Never impeached. Never refuted." Like many other such reports, it has nevertheless been largely "buried and ignored."

With these caveats in mind, our report explodes myths about a justice system "soft" on Aboriginal offenders. In fact, Aboriginal participation in the Saskatchewan justice system is growing, it is becoming more costly, and the costs will increase substantially if nothing is done. The report shows, in tables, figures, and narrative form, the ways in which these costs are rising within the justice system in the province. The report includes costs of policing, courts, prosecutions, legal aid, alternative measures, corrections, youth justice, and victim services (with projections from best to worst case scenarios and with distinctions along ethnicity, gender, age, and, where possible, abilities, and other ines). We not only elaborate the costs of doing nothing, but also consider the osts and benefits associated with the value of education, community capacity-building, or programs for inmates, for instance, and their implications for larger policy decisions. That is, we take into account initiatives within the status quo ituation that are already directed at change.

In addition to drawing on important reports and commissions from the 1960s on, the report benefits greatly from statistics produced and published by the following authoritative sources:

- Canadian Centre for Justice Statistics (CCJS) at Statistics Canada
- Canadian Institute for the Administration of Justice
- Canadian Criminal Justice Association (CCJA)
- Correctional Service of Canada (CSC)
- Corrections and Public Safety (SK)
- Department of Social Services, Government of Saskatchewan
- National Crime Prevention Council
- Research Branch (Ottawa), Solicitor General of Canada
- Saskatchewan Department of Justice
- Statistics Canada
- Strategic Research and Analysis Directorate, Treaties, Research, International & Gender Equality, Indian and Northern Affairs Canada

In this way, the report not only presents a financial case for change, but also provides analysis of qualitative measures of the cost and benefits of the status quo. At all times, the report is concerned to represent the findings so as to help enlighten the general public and decision-makers. In other words, we address widespread myths and fears about Aboriginal participation in the justice system, distinguish public perception and facts, enrich public debate, facilitate decision-making, and motivate meaningful change.

To these ends, the report, where appropriate, discusses comparative data on non-Aboriginal participation in Saskatchewan as well as on trends and issues in other jurisdictions. The information is profiled and summarized in a number of strategically placed figures and tables. Building on the example of the 1996 *Saskatchewan and Aboriginal Peoples in the 21st* Century, the report presents important data and information related to demographic trends, health, employment, education, and income in ways that are accessible and clearly connected to the analysis. The following are the major emphases:

- Demographic profiles (and projections) of North American Indian (First Nation) and Metis people living in Saskatchewan from 2001 (real) and 2002 to 2021 (projected).

- Breakdown of the number of North American Indian (First Nation) and Metis people involved in the justice system in Saskatchewan in 2001 (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available) across the areas of policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections.

- Valuation, in financial terms, of the cost of that involvement (also by Aboriginal group, across age, gender, abilities, and type of justice system involvement where available).

- Forecast of the number of Aboriginal people involved in the justice system from 2002 to 2021.

- Forecast of the likely type of justice system involvement by Aboriginal peoples from 2002 to 2021.

- Breakdown of the costs of that involvement, and what that involvement will amount to, in financial and other terms, over the 20-year period (2002-2021) if nothing is done.

- Estimates and projections of the costs and benefits of education levels, labour-force participation, education and mentoring programs, addictions counseling and employment skills training, alternative measures and initiatives that are beginning to effect change (for example, community and emotional needs programming, cultural and spiritual practices, alternative dispute resolution, community development, and Cree Court Party), on Aboriginal participation rates in the justice system (policing, the courts, legal aid, criminal prosecutions, and adult and youth corrections).

2.1 Methodological Assumptions and Choices

Demographic determinations

In addition to the above methodological considerations in representing the data and analysis in our report, we have made other choices about authoritative sources of data, the best means to represent the data, and appropriate forecasting models based on statistical and other assumptions. For example, for the most part, we follow the Census Canada definition of "Aboriginal" (including North American Indian, Metis, Inuit, and where appropriate, "other" Aboriginal) in part because it is more inclusive in terms of its categorization of Indian people (those that identify, on or off-reserve, status or non-status). We did not choose to use the Department of Indian Affairs and Northern Development (DIAND) data focused exclusively on "Registered Indians" (although we refer to data on Registered Indians from time to time for comparative purposes). Further, the DIAND data is over-inflated because it includes Registered Indians associated with, for instance, a band (reserve) in Saskatchewan, but residing outside the province. "Incomplete enumeration and undercoverage," according to Statistics Canada (2003a), "account for the most difference between the 2001 Census count of persons registered under the Indian Act (about 558,000) and that produced by the Indian register maintained by the Department of Indian Affairs and Northern Development (about 681,000)."

Although we choose to follow the Census definition of "Aboriginal," we also note that there is usually an under-enumeration figure of from 2 per cent to 3 per cent for persons enumerated regardless of ethnic background. In 1996, for example, the population estimate for Canada was 2.6 per cent higher than the population enumerated in the census (Statistics Canada, n.d). In other words, the choice to follow the Census lends to a conservative (yet inclusive) estimate of the Aboriginal population as a whole.

Given our choice to use the 2001 Census data, it is important to highlight some of the limitations in doing so. Aside from the general limitation of Census data underestimating the actual total population, Statistics Canada (2003a) notes that, while some people are not counted for a number of reasons (for example, they may have been between households when the census was being conducted) "undercoverage [of the Aboriginal population] in the 2001 was considerably higher among Aboriginal people than among other segments of the population" because "enumeration was not permitted, or was interrupted before it could be completed, on 30 Indian reserves and settlements."

Projections of demographic profiles are made, covering 2002-2021, using a natural growth rate for the 2001 Saskatchewan Aboriginal population of 2.21 per cent, 2.63 per cent for the North American Indian (First Nations) population, and 1.29 per cent for the Metis population. The natural growth rate for the Saskatchewan non-Aboriginal population is (negative) -0.089 per cent; the natural growth rate for the total population of Saskatchewan (Aboriginal and non-Aboriginal) is 0.28 per cent, starting in 2001 at 978,938 and ending 2021 at 1,035,412 a difference of only 56,474 (all of which is a part of the Aboriginal increase).

We use the natural growth rate and not the growth rate of Aboriginal peoples from 1996-2001 because the inflated growth rate (3.2 per cent) in that period was due to other factors in addition to natural growth, factors which would not typically or necessarily recur or continue at the same rate over the next twenty years. Those factors include fuller enumeration of reserves in 2001 and increased willingness of people to identify as Aboriginal perhaps as a result of cultural renewal in the wake of RCAP. It is important to note that a number of studies (including FSIN, 1996) have over-estimated their forecasts of growth in the Aboriginal population by using Census data that includes more than births and deaths (especially increases in identification after Bill C-31 extending status to women and children previously disenfranchised under the *Indian Act*).

In the case of statistics related to youth participation in the justice system, it is important to recognize that the figures are inflated by the practice of registering different levels of supervision (remand, open custody, probation, for example) as separate admissions to corrections (Statistics Canada, 2003a). In contrast, figures may be underestimated because not all participants self-identify as First Nations or Metis—and indeed not all jurisdictions are equally interested to identify whether or not participants are Aboriginal. That, in Saskatchewan, Aboriginal participation in the justice system (currently ranging from 52 per cent in policing to 76 per cent in federal incarceration) is big business is added incentive in this jurisdiction to attend to issues of Aboriginal identification, though not equally or consistently across the six cost areas of the administration of justice in Saskatchewan. For instance, people of Aboriginal identity are systematically tracked in provincial and federal corrections, but not to the same extent in policing, prosecutions, courts, or legal aid.

The participation rate of Aboriginal peoples in federal and provincial corrections (institutions and community supervision) has been tracked and forms the basis of participation projections. For the purposes of the report, given the absence of consistent tracking of Aboriginal participation in policing, prosecutions, courts, and legal aid, we had to rely on information in Quann & Trevethan (2000). They find that 52 per cent of accused of crimes in Saskatchewan were of "a known Aboriginal status in 1997," though their own figures are based only on police-reported Aboriginal participation in crime in urban centres: Prince Albert, Regina, and Saskatoon. Though these numbers are problematic in their assumptions, these assumptions do in turn impact—arguably, disproportionately as a result of systemic disadvantage—on Aboriginal participation in prosecutions, courts, and legal aid. In fact, Aboriginal participation in these areas is somewhere between the 52 per cent accused figure and the 76 per cent in correctional facilities and community supervision.

In assessing Aboriginal participation and justice costs in the six cost areas over time, forecasting growth rates differ from one cost area to another because the historic cost trends differ. For example, legal aid resources have not shown growth over the last 10 years, while court costs have grown exponentially. As well, participation rates differ for Aboriginal youth as opposed to adults: the cohort of Aboriginal youth (12-17 years of age) grows at a slower rate from 2002 to 2021 than the adult cohort (18+) because the Aboriginal baby boom (from the late 1960s) is aging. The different participation growth rates in turn affect the growth of the Aboriginal proportion of costs for all six justice cost areas.

Costs are represented in 2001 constant dollars discounted at 2, 3, and 4 per cent. The 3per cent inflation or discount rate is that used widely by economists in forecasting inflation and recommended in McKeague, N. R. (2002). *The Queen's Bench Rules of Saskatchewan*, Rule 284(b):

> **three per cent per annum is admissible in evidence as the rate of interest to be used in determining the capitalized value of an award in respect of future pecuniary damages to the extent that it reflects the difference between estimated investment and price inflation rates.**

Costing Terminology

Total cost tables reflect figures based on historical data trends (1996 to 2001) or other if the five years of data is missing (for example, costs for courts and prosecutions are collected every 2 years). Costs are projected using different **constant dollar** rates (using **discount or inflation** rates of 2 per cent, 3 per cent, and 4 per cent). 2 per cent and 4 per cent were chosen as minimum and maximum rates, yielding the worst-case and best-case scenarios, respectively. Currently, the consumer price index rate is closer to the 2 per cent inflation rate.

Constant dollar refers to a condition in which inflation or escalation is not applicable. Prices and costs are de-escalated or re-escalated to a single point in time.

The economic example used to explain **discount or inflation rates** goes as follows. If you buy a basket of goods (or hockey stick) today, what does it cost? And, how much do you think you would have to pay for the same basket of goods (or hockey stick) next year, or in 20 years? Obviously it will cost more, but how much more. That depends on the discount rate used.

Inflation is the rate at which the general level of prices for goods and services is rising.

We also refer to **nominal dollar rates.** Here we assume that a dollar today is worth a dollar tomorrow. The costs associated with corrections, for example, will continue to rise (for a number of reasons – more participants, union raises, etc.), so the cost of doing business next year will be higher. BUT, there is no discount rate. Essentially, the discount rate is at 0.00 per cent, meaning that if the cost of a service increases historically by 5 per cent, it will continue to do that. If in 2001 the cost was $100, next year it will be $105 (+5 per cent). The same service discounted at 2 per cent would be $103 the following year (plus 5 per cent minus 2 per cent equals a 3 per cent increase). At 3 per cent the new cost would be $102.

Nominal Dollars = Dollars that are not adjusted for inflation.

For the total cost table, the **Aboriginal proportion of the policing** costs was based on an assumed 2001 number of **Aboriginal peoples accused** (52 per cent) in relation to **non-Aboriginal peoples accused** (48 per cent). This is then "grown" out over the 20-year period by the rate of growth in the Aboriginal population of Saskatchewan (=2.21). The rates came from the most recent and extensive (of three) reports on Aboriginal crime in Saskatchewan (Quann & Trevethan, 2000).

Legal aid, prosecutions, and court costs are based on the assumption that the rates will increase in relation to the rate of increase of policing (which is based on accused statistics).

Aboriginal costs represent a proportion of the total costs, grown at a rate representative of the particular population in question (as follows).

- We grew the costs related to Aboriginal youth incarceration (provincial) by the growth rate for Aboriginal youth (12 to 17 years of age) in the province = .97 per cent **(note: the low growth rate because natural growth rate levels out over the 20-year period, 2001 to 2021).**

- We grew the Aboriginal Adult corrections costs (provincial and federal) by the provincial Aboriginal rate of growth for the cohort 18 to 50 years of age = 2.34 per cent **(note: this rate of growth is higher because the Aboriginal baby boom age-group moves out of the 12 to 17 year age-group during the time-period covered, 2001 to 2021).**

- We grew the Aboriginal policing, legal aid, prosecutions and court costs by the provincial Aboriginal rate of growth for Aboriginal peoples (total) = 2.21 **(note: this rate represents a medium growth rate).**

When looking at forecast growth rates of the Aboriginal population, we choose to focus on the "Natural Rate of Growth", which refers specifically to *births minus deaths*. **Birth and death rates are, in turn, determined by fertility and mortality rates.** The analysis does not account for immigration/emigration, enumeration issues, or the issue of increasing and decreasing numbers due to *ethnic shift* (where people define themselves differently as a result of changing legal categories, self-identification or other reasons, such as pride of identification, or identification for self-interest (ability to access funding or programs, etc.).

In addition, our report highlights a number of scenarios from best to worst case and identifies related strategies for change—what policy makers and politicians might do to galvanize change and what changes will be most productive and cost-effective. In the end, the report offers the Commissioners frameworks as well as detailed data to support their arguments for change.

3.0 POPULAR MYTHS AND POWERFUL REALITIES

If misconceptions, myths, and fears motivate oversimplified responses to justice issues and polarize opinion, they also undermine confidence in the administration of justice. No jurisdiction can operate effectively without the public trust. Nor can any jurisdiction afford the human costs of such ignorance—or the economic consequences of decisions it licenses. In this section we address some of the most damaging myths that obscure what we all have to gain from change.

Myth #1: Canada has and should have only one system of justice.

- In his dissenting opinion in *R. v. Morin* [1995], Justice Bayda stressed that there may be "only one system of justice," but "an objective onlooker unfamiliar with our society would be surprised to learn that was the case were he or she to look only at the consequences or products produced by the system of justice. From the prospective of consequences we appear to have two systems of justice."

Myth #2: All Canadians are or should be equal before 'the' law.

- "The present system fails the Aboriginal peoples. . . . the current regime fails to respect the Charter's guarantees of equality and fundamental justice in a number of important respects" (Law Commission of Canada, 1991, 16, 75).

- "Aboriginal peoples have experienced the most entrenched racial discrimination of any group in Canada. Discrimination against Aboriginal people has been a central policy of Canadian governments since Confederation. . . . In short, the current court system is inefficient, insensitive and, when compared to the service provided to non-Aboriginal people, decidedly unequal." (Hamilton and Sinclair, 1991).

Myth # 3: Aboriginal peoples are treated preferentially by the justice system.

According to the Canadian Criminal Justice Association (2000), Aboriginal people experience overt and systemic racism within the justice system with these particular results:

- Aboriginal accused are more likely to be denied bail.

- Aboriginal people spend more time in pre-trial detention.

- Aboriginal people are less likely to have legal representation at court proceedings.

- Aboriginal clients, especially in the North, spend less time with their lawyers.

- Aboriginal offenders are more than twice as likely to be incarcerated than non-Aboriginal offenders.

- Aboriginal Elders are not accorded the same status as other spiritual leaders, priests and chaplains.

- Aboriginal people often plead guilty because they feel intimidated by court proceedings and want them over.

Myth # 4: The administration of justice requires jurisdictional clarity: Canada cannot afford to add jurisdictional powers to Aboriginal peoples.

- The *Constitution Act, 1867* entailed a complex division of powers and responsibilities on justice between federal and provincial governments (with great diversity among the latter) and even concurrent jurisdictions among municipal, federal, and provincial policing (Gosse, Henderson, & Carter, 1994).

- "In reality, there are already many criminal law authorities in Canada. . . . Canadians do not complain loudly about the separate criminal law jurisdiction held by the military. . . . . Canadians do not question the general workability of the civil and common law traditions in this country" (Monture-Angus, 1995).

- Likewise Hamilton and Sinclair (1991) recognize in the fact of "fully functioning tribal court systems on a variety of Indian reservations in the United States, many of them similar in size and socio-economic status" to Indian reserves in Manitoba "strong evidence that separate Aboriginal justice systems are possible and practical."

- In addition, Hamilton and Sinclair (1991) find support for a separate court system in the persistence of the section 107 court of the *Indian Act*:

> **The section 107 court remains in the statute as a vestige of the ignominious past of federal colonization and domination of reserve life. . . . The restrictions that exist in the Act are such that it offers little promise for the long-term future and is unlikely to satisfy current demands from First Nations to establish their own justice system. At most, it offers a short-term interim measure and an indication that a separate court system can function readily on Indian reserves without causing grave concerns within the rest of society or the legal community.**

Myth # 5: Crime rates are increasing dramatically.

- National crime rate decreasing by 2.8 per cent annually from 1992 to 2001. (CCJS, Statistics Canada)

- Saskatchewan has the highest crime rate of the provinces (lowest in rural, agricultural communities in the south and highest in the north), though victims are disproportionately poor and Aboriginal peoples.

Myth # 6: Violent crime is increasing substantially in Canada.

- Even though violent crime rose by 3 per cent in 2000, it remains only 13 per cent of the 2.4 million Criminal Code incidents (excluding traffic and drugs) (Correctional Service Canada, 2000).

Myth #7: Most violent crimes involve weapons.

- In 2000, only 15 per cent of violent crime involved a weapon—a reduction from 20 per cent in 1995 (Correctional Services Canada, 2000).

Myth #8: Most homicides are committed by strangers.

- Only 17 per cent of solved homicides in 2000 were committed by strangers; 32.3 per cent by family members, and 50.5 per cent by acquaintances (Correctional Services Canada, 2000).

Myth # 9: Most sexual assaults against women are committed by strangers.

- In 1999, 23 per cent were committed by strangers; 32 per cent by acquaintances, and 24 per cent by family members (Correctional Services Canada, 2000).

Myth # 10: Crime is an urban phenomenon.

- A 2000 study of 25 Census Metropolitan Areas showed rates of Criminal Code violations in urban areas similar to those in smaller cities, towns, and rural areas (Correctional Services Canada, 2000).

Myth # 11: Most youth crime involves violence.

- In 2000, 22.4 per cent youth offenders were charged with violent crime; 50 per cent of those were minor assaults.

Myth # 12: Targets of youth crime are predominantly adults and elderly.

- 52 per cent of victims of violent youth crime are other youths.

- Children younger than 12 years account for 11 per cent of victims.

- Only 2 per cent of victims of youth violent crime were 55 or over. *(CCJS, Statistics Canada)*

Myth # 13: High income earners are at greatest risk of violent victimization.

- Low household income is associated with violent victimization.

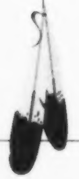
- The rate of victimization of lowest household income category (192 per 100,000) double that of other categories.

- High household income is associated with property crime. *(CCJS, Statistics Canada)*

Myth # 14: High income earners report highest fears of crime.

- Those in lowest income bracket twice as likely as those in highest brackets to believe crime is higher in their neighbourhood.

- Perception of safety increases with income. (CCJS, Statistics Canada)



Myth # 15: Victims of crime are largely non-Aboriginal.

- 206 per 1,000 Aboriginal people (over 15 years of age) are victims of crime.

- 81 per 1,000 non-Aboriginal people and 39 immigrants per 1,000 (over 15 years of age) are victims of crime, according to the General Social Survey, 1999. (CCJS, 2001b)

Myth # 16: Courts are too lenient on offenders.

- Canada is a world leader in incarcerating 118 per 100,000 general population.

- Canada incarcerates youth at a rate four times that of adults and twice that of many states (Anne McLellan; qtd. in Green and Healy, 2003).

- Saskatchewan incarcerates more youth per capita than any other jurisdiction in Canada (an estimated 75 per cent Aboriginal). (Green & Healy, 2003)

Myth # 17: Aboriginal offenders represent the largest proportion of inmates in correctional institutions.

- Non-Aboriginal inmates account for 83 per cent of the inmate population. (CCJS, 2001a)

- Aboriginal inmates represented 76 per cent of adult provincial inmates in Saskatchewan, 1998 – 99 (CCJS, 2001a)

Myth # 18: Severer sentences deter criminals from offending.

- Empirical evidence in U.S., Canada, and Europe over the last 30 years shows longer sentences do not reduce recidivism.

- Empirical evidence in U.S., Canada, and Europe over the last 30 years shows longer sentences may increase recidivism.

- The certainty rather than the severity of punishment exerts greater deterrent power.

- Study of 442,000 offenders showed harsher sanctions had no deterrent effect on recidivism; punishment increased recidivism by 3 per cent (findings consistent across adult/youth, male/female, Caucasian/minority). (Correctional Services Canada, 2000; Smith, Goggin, & Gendreau, 2002).

Myth # 19: Most women offenders have served a previous federal sentence.

- As of September 1999, 85.9 per cent of women offenders serving their first federal sentence.

- 9.9 per cent serving 2nd and only 4.2 per cent serving 3rd or higher (CSC, n.d.)

Myth # 20: Correctional programming to rehabilitate offenders is a waste of money.

- Research on targeted programs shows that participating offenders are less likely to re-offend; high-risk offender participation associated with 50 per cent reduction in recidivism (Correctional Services Canada, 2000).

- Hollow Water's Community Holistic Circle Healing (CHCH) saves money
  - for every $1 contributed by provincial government saved $3.75 for pre-incarceration, prison, and probation costs.
  - for every federal dollar, it would have spent $2-$12 on incarceration and parole costs.
  - for every $2 the government spends, the community receives between $6 and $15 worth of services and value-added benefits. (Couture, Parker, Couture, & Laboucane, 2001)

Myth # 21: Most offenders commit new crimes during parole.

- 74.2 per cent of 1,796 parole cases in 2000-2001 were successfully completed.

- 16 per cent had parole revoked for breach of conditions and were hence prevented from committing new crimes.

- 8.4 per cent had parole revoked for commission of new non-violent crime.

- 1.4 per cent had parole revoked for new violent offences. (Correctional Services Canada, 2000)

Myth # 22: Aboriginal offenders have less parole success.

- Aboriginal men have 82 per cent successful completion.

- 13 per cent Aboriginal men revoked for violation of conditions.

- 6 per cent revoked for new offence (85 per cent non-violent).

- Aboriginal women have 81 per cent successful completion.
- 12 per cent Aboriginal women revoked for violation of conditions.
- 7 per cent Aboriginal women revoked for new offence (100 per cent non-violent). (Correctional Service Canada, 2001)

4.0 DEMOGRAPHICS

> **Passage of the first *Indian Act* in 1876 put in place a regime of distinctions among Aboriginal Peoples that politically, administratively, and viscerally divide Aboriginal people to this day.** (Gibbins, 1997)

Demographic analyses and projections importantly illustrate the nature of the systemic barriers that First Nations and Metis people in Canada face, the force of the legal definition of identity, implications of the reinstatement of status via Bill C-31 and of self-reporting, and the power of statistical tracking. Demographic representation remains constrained by the forms of data collection, including what is and is not collected, what is and what is not rendered visible, but also by the colonial categories and simplifications of complex identities (collapsed into Aboriginal/non-Aboriginal, for instance). The brutal simplifications of demographic data have in turn been inclined to misrepresent the Aboriginal "problem" and obscure rich resources, the capacities, successes, and achievements of Aboriginal adults and youth and with profound implications for policy. To counter these dominant reporting trends, we aim to unpack assumptions underlying the data, draw on qualitative as well as quantitative measures, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) in order to highlight some key factors that aid understanding and direct us to areas for and means of change.

Definitions: Aboriginal population

There are many ways of defining the Aboriginal population, which can result in different estimates of its size. There is no single or "correct" definition of the Aboriginal population and the choice of a definition depends on the purpose for which it is to be used. Different definitions/counts are used depending on the focus and requirements of the user.

The 2001 Census provides data that are based on the definitions of ethnic origin (ancestry), Aboriginal Identity, Registered Indian, and band membership. The January 21, 2003 release uses mostly the Aboriginal Identity concept to provide a demographic profile of the Aboriginal population. Subsequent releases will provide additional data on the Aboriginal peoples of Canada and their socio-economic characteristics.

Aboriginal Origin (Ancestry) refers to those persons who reported at least one Aboriginal origin (North American Indian, Metis or Inuit) on the ethnic origin question in the Census. The question asks about the ethnic or cultural group(s) to which the respondent's ancestors belong.

Aboriginal Identity refers to those persons who reported identifying with at least one Aboriginal group, i.e. North American Indian, Metis or Inuit. Also included are individuals who did not report an Aboriginal identity, but did report themselves as a Registered or Treaty Indian, and/or band or First Nation membership.

Registered, status or treaty Indian refers to those who reported they were registered under the Indian Act of Canada. Treaty Indians are persons who are registered under the Indian Act of Canada and can prove descent from a band that signed a treaty. The term "treaty Indian" is more widely used in the Prairie provinces.

Member of an Indian band or First Nation refers to those persons who reported being a member of an Indian band or a First Nation of Canada.

Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Registered Indian refers to a person of status within the meaning of the *Indian Act*, whose name appears on the Indian Register as maintained by Indian and Northern Affairs Canada (INAC), is a registered Indian. In 2001 Registered Indians were affiliated with one of the 612 bands located across Canada.

Source: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002.

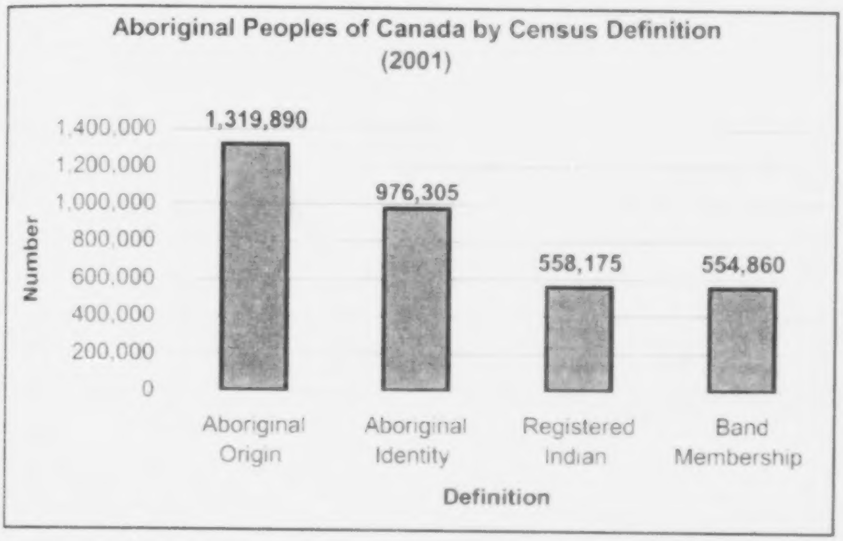


Figure 1-Source: Statistics Canada. (2003). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Figure 2 shows how the numbers reporting Aboriginal origin and Aboriginal Identity have changed from the1996 Census to the 2001 Census.

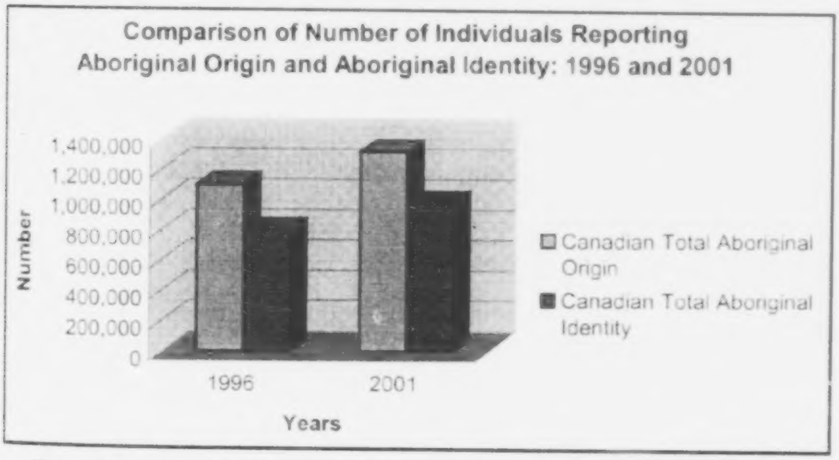


Figure 2–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

4.1 Aboriginal and Non-Aboriginal Peoples of Canada

> **The increasing diversity of the urban population and changing concepts of social belonging require a focus both on urban neighbourhoods, as geographic spaces, and on communities of interest based on a variety of affiliations.**
> (Graham & Peters, 2002)

The Aboriginal population is both younger and growing faster than the general population (median age 37.7 years), the median age in Canada 24.7 years, and in Saskatchewan 20.1 years, while almost 40 per cent of Aboriginal youth in Saskatchewan were 14 years of age and under in 2001 (Statistics Canada, 2003b).

The population of Canada is also overwhelmingly urban: 79.4 per cent in the 2001 Census; between 1951 and 1996, the urban Aboriginal population grew from 7 to almost 50 per cent, non-Status Indians representing the largest proportion (73 per cent). While disadvantage, discrimination, and racism persist, there are also renewed efforts to value and celebrate our differences as competitive advantages, as community development capacity, as critical elements in a renaissance of "civic culture," and as holistic response to "the livable city" (Graham & Peters, 2002). And research emphasizing a focus on communities and not individuals suggests renewed capacities for safe, secure, and stable communities and economic development (LaPrairie, 1995).

Figure 3 presents Census 1996 and 2001 data on Aboriginal identification in Canada. Of the 976,305 people that reported Aboriginal identity in 2001, 608,850 identified with North American Indian (N. A. Indian); 292,310 with Metis; 45,070 with Inuit; and 30,075 with Other persons include those that reported more than one Aboriginal identity group so that the numbers do not add up to the total because of double counting.

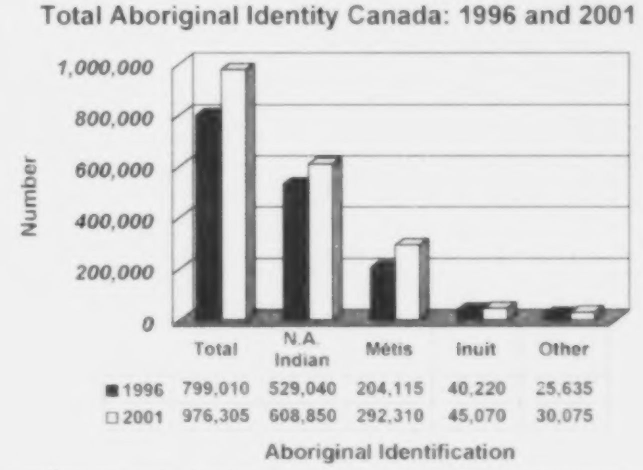


Figure 3–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile. January.

Understanding the demographic data means understanding the mobility of the Aboriginal population, one in five moving in the twelve months before the 2001 Census (as opposed to one in seven in the general population and one in ten moving to and from urban centres (Chalifoux & Johnson, 2003). Mobility and migration patterns of Aboriginal peoples in turn aggravates barriers to access to program and service delivery whether health, housing, social services, training and education — and with significant consequences for the health and well-being of the community. The effect of net migration statistics (that are currently unable to distinguish patterns of mobility across first-time, second-generation, etc. urban residents) is to mask for policy-makers the reality of movement within and between urban centres rather than "mass exoduses" from reserves. And the statistics likewise obscure the challenges to the younger demographic and lone parents in this urban migrant group — especially threats to culture, family, and income, as well as high victimization and crime — contributing further to cycles of movement and isolation (Chalifoux & Johnson, 2003).

When behaviour outstrips the ability of professionals to monitor and manage it, it is tempting to re-confine it within outmoded categories — in this case the narrative of "mass exodus" from reserve to city that replays and intensifies anxieties that attended the rapid urbanization of rural populations in nineteenth-century Europe, anxieties that played a major role in the establishment of reserves in Canada in the first place.

And an already difficult situation is aggravated by the jurisdictional ambiguities and reduced role and responsibilities of the federal government in the lives of urban Aboriginal peoples. Not surprisingly, in addition to high levels of unemployment and poverty, the following disparities in health are noted (Chalifoux & Johnson, 2003):

Mental and Physical Health

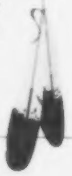
- Off-reserve Aboriginal population experience major depressive episodes 1.5 times more often than non-Aboriginal

- Off-reserve Aboriginal population 1.5 times more likely to report fair or poor health

- Off-reserve Aboriginal population 1.5 times more likely to report one or more chronic conditions (diabetes, high blood pressure, or arthritis)

- Off-reserve Aboriginal population 1.4 times more likely to report long-term activity restriction

The following compelling statistics (CCJA, 2000) reveal the consequences, especially in the post-World War Two incarceration record, of new demographic profiles, new technology, and new justice system practices adding to rising expectations of Aboriginal veterans returning from the war. If high post-war birth numbers and increasing numbers entering teenage and young adult years (18-29) were associated with risk ((Boe, 2002), other factors included: new



energetic policing practices and agreements with the Royal Canadian Mounted Police to enforce Canadian law consistently where Aboriginal law had previously prevailed, as well as increased mobility with new highways and transportation, greater access to alcohol, and close oversight of social and family legislation (Hamilton and Sinclair, 1991):

Population:

- The Aboriginal population is growing faster than the non-Aboriginal population

Birth rate as per INAC figures:

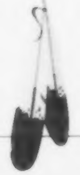
- Fertility rate for Aboriginal women is 2.9 children (1.7 for non-Aboriginal)
- By 2005, registered Aboriginal population projected to rise to 755,200 (42 per cent increase since 1992)
- Projected Aboriginal population increase 50 per cent greater than non-Aboriginal population

Life expectancy:

- For Aboriginal men 7 years shorter than average non-Aboriginal Canadian
- For Aboriginal women 6.5 years shorter than average non-Aboriginal Canadian
- Inuit and reserve residents lowest life expectancy of all Aboriginal people
- Infant mortality rates for Status Indians 17 per 1000, 28 for Inuit, and 8 for all Canadians (1986 figures)
- Life expectancy increasing and infant mortality rates decreasing

Suicide:

- Suicide 2 to 3 times more common among Aboriginal than non-Aboriginal peoples
- Suicide 5 to 6 times more common among Aboriginal than non-Aboriginal youth
- Suicide per 100,000 (1986 figures): Status Indians, 34; Inuit (NWT), 54; all Canadians, 15



Incarceration:

- Before World War Two, Aboriginal population proportionate to numbers in population at large
- Since World War Two, Aboriginal participation has grown and continues to grow
- In 1997 Aboriginal offenders 12 per cent (but 3 per cent of general population)
- In 1997 highest percentage (64 per cent of federal offenders) in Prairie region
- Aboriginal offenders more likely to serve sentence in institutions than in community
- Aboriginal corrections staff 1.7 per cent of Correctional Service of Canada

4.2 Aboriginal and Non-Aboriginal Peoples of Saskatchewan

> **From a policy perspective, it is crucial that we recognize that the urban Aboriginal population in Canada is not distinct from the "non-urban." They are interconnected in terms of mobility, culture, and politics.** (Graham & Peters, 2002)

Demographic Considerations

2001 Census underestimates the total population by approximately 2 to 3 per cent and underestimates Aboriginal population in particular because some communities are not enumerated (in whole or part), some individuals and communities refuse to participate, some individuals do not have a permanent residence, others are between locations on Census day, and some people of Aboriginal descent do not self-identify (Statistics Canada, 2003a).

The Saskatchewan population forecasts (2002-2021) are based on natural growth rates (births minus deaths). The birth rates for Aboriginal (North American Indian and Metis) women (15-35 years of age) are derived from 2001 Census data: the birth rate for North American Indian women is 16.72 per cent and for Metis women 9.70 per cent.

Mortality rates for non-Aboriginal peoples are based on information provided by Statistics Canada, Health Statistics Division; mortality rates for Aboriginal peoples are derived from First Nations on-reserve data provided by Health Canada (2003).

Especially relevant to decoding the data in the following figures and tables is an understanding of the issues not only of colonial identity categories and self-identification and the confusions and contradictions of jurisdictional ambiguities, but also of the conspicuous mobility of the Aboriginal population—one in five (one in seven in general population) moving in the twelve months before the 2001 Census and one in ten moving to and from urban centres (Chalifoux & Johnson, 2003).

Saskatchewan's *Metis and Off-Reserve First Nations Strategy* is one promising initiative to acknowledge that Aboriginal and treaty rights "are not confined to the boundaries of the reserve" and to address not only the needs of those caught in a "jurisdictional 'no man's land,'" but also "by extension, the social and economic well-being of the broader community" (Chalifoux & Johnson, 2003). The strategy, according to Brent Cotter, Deputy Minister, Government Relations and Aboriginal Affairs, Government of Saskatchewan, is about social inclusion and health:

> **Our future in Saskatchewan depends on our ability to ensure that Aboriginal and non-Aboriginal people no longer live in cultures that are isolated from one another. . . . It is fundamentally important for the social health of our communities, and beyond, in Saskatchewan that we find healthy ways for that integration, that intersection of two cultures, two societies, and in many cases two races, to be positive and constructive rather than negative and dysfunctional.** (qtd. in Chalifoux & Johnson, 2003)

Mortality rates among Aboriginal peoples are lower than the non-Aboriginal rates because of the larger proportion of people aged 65 + in the non-Aboriginal population. Over the next 20 years, the fertility rate among Aboriginal women is predicted to decrease as a result of increased education and labour force participation. At the same time, the mortality rate for the Aboriginal population will increase as the mean age of Aboriginal peoples increases. In other words, the Aboriginal population is not going to keep growing at current rates; it will level out.

The natural growth rate for the Saskatchewan Aboriginal population is 2.21 per cent; 2.63 per cent for the North American population, and 1.29 per cent for the Metis population. The natural growth rate for the non-Aboriginal population is (negative) -0.089 per cent.

The following five figures based on the 2001 Census represent the population reporting Aboriginal identity by province (Figure 4); population reporting North American Indian identity by province (Figure 5); population reporting Metis identity by province (Figure 6); median age Aboriginal and non-Aboriginal populations by province (Figure 7); and median age North American Indian and non-Aboriginal populations by province (Figure 8).

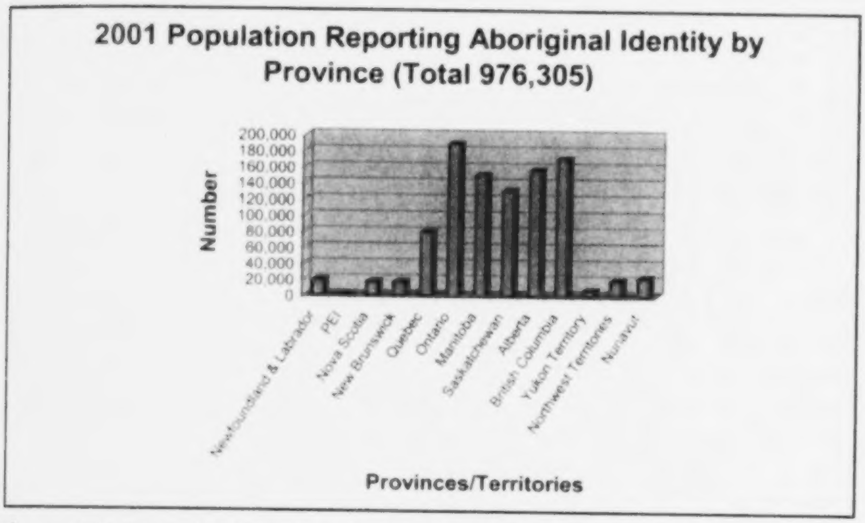

2001 Population Reporting Aboriginal Identity by Province (Total 976,305)

Figure 4–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

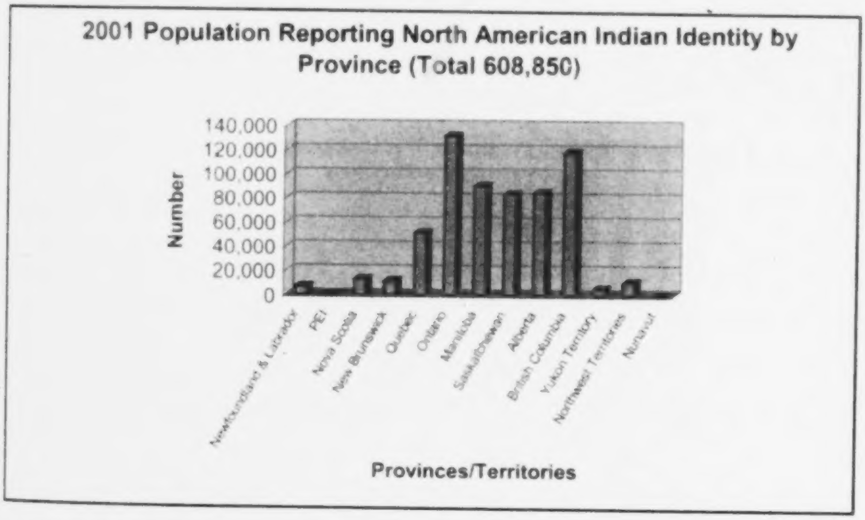

2001 Population Reporting North American Indian Identity by Province (Total 608,850)

Figure 5–Source: Statistics Canada.(2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

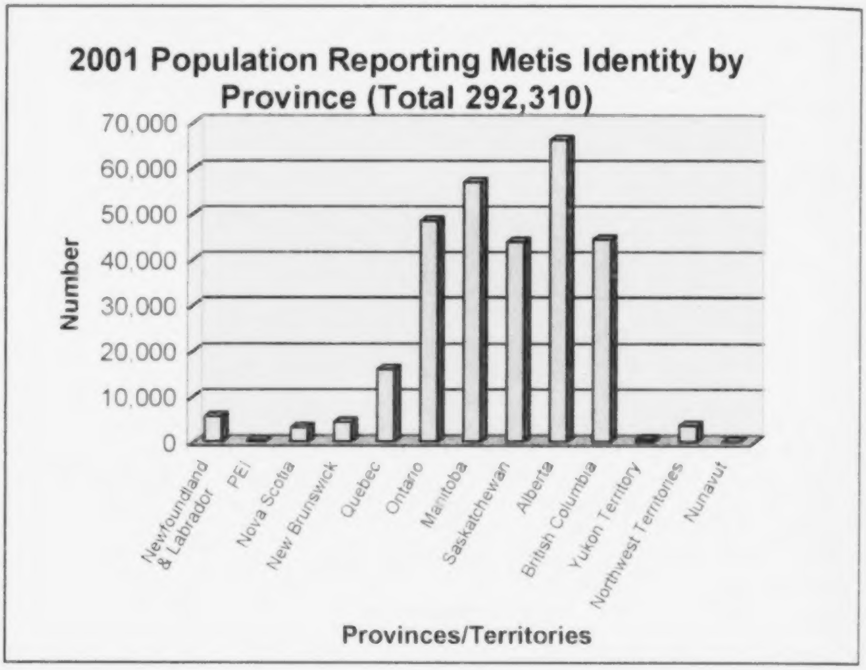


Figure 6–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

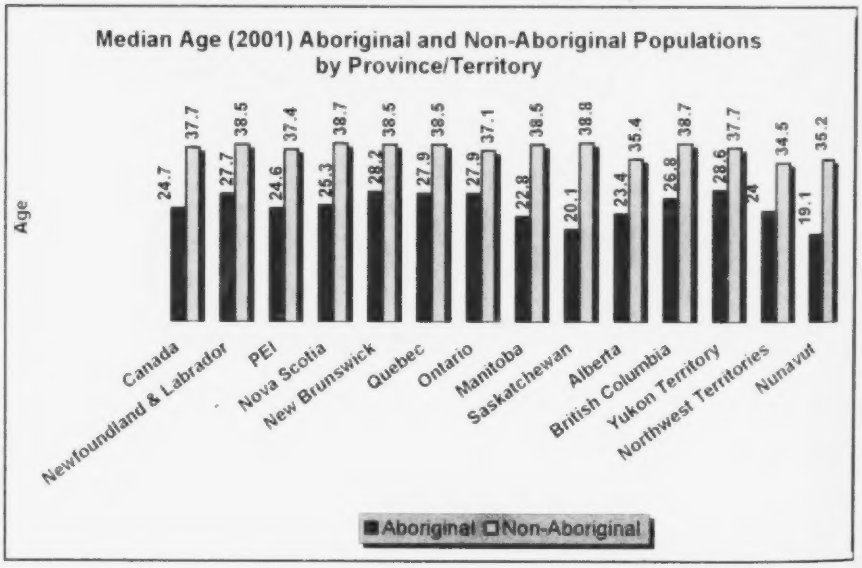


Figure 7–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

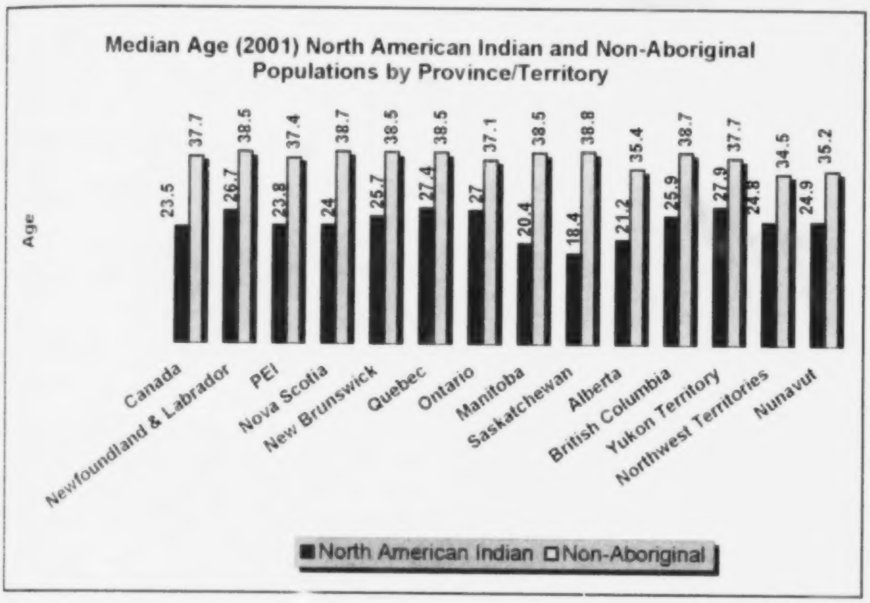
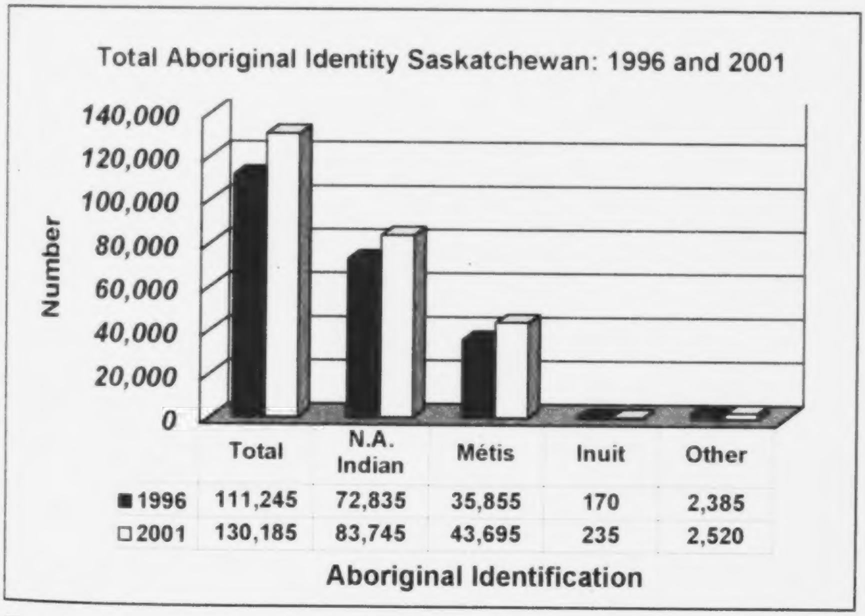


Figure 8–Source: Statistics Canada. (2003b). 2001 Census: analysis series. Aboriginal peoples of Canada: A demographic profile, January.

Figure 9 presents Census 1996 and 2001 data on Aboriginal identification in Saskatchewan.



	Total	N.A. Indian	Métis	Inuit	Other
■ 1996	111,245	72,835	35,855	170	2,385
□ 2001	130,185	83,745	43,695	235	2,520

Figure 9–Source: Statistics Canada. (2003a). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

The data represented in Figure 9 is presented following in a pie-chart (Figure 10) to show the proportion of the population that reported an Aboriginal identity in Saskatchewan.

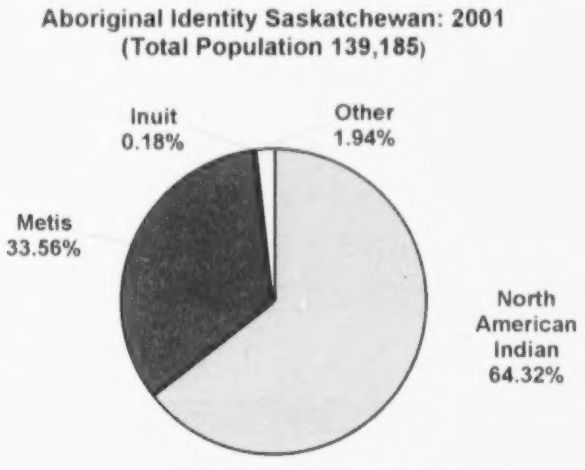


Figure 10–Source: Statistics Canada. (2003a). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

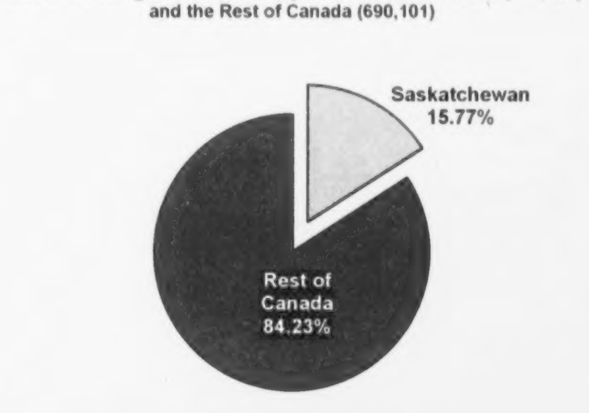


Figure 11–Source: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002.

Figure 11 highlights the proportion of Status Indians registered with a Saskatchewan Indian band in the Department of Indian Affairs and Northern Development (DIAND) registry. According to DIAND statistics, the Registered Indian population in Saskatchewan numbers 108,801 (15% of the provincial population). Figure 9 provides a different number of individuals reporting North American Indian identification for the same year (83,745) because it is based on definitions provided in the 2001 Census. Figure 12 (below) compares DIAND and Statistics Canada data (1996 and 2001).

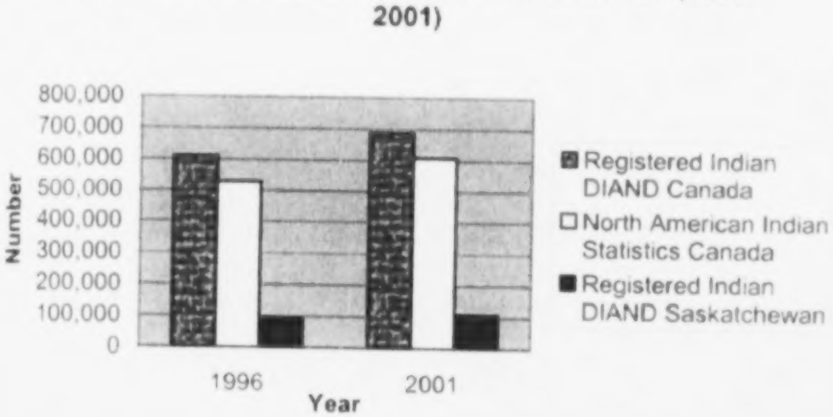


Figure 12–Sources: Department of Indian Affairs and Northern Development (DIAND). (2003). Basic Departmental Data – 2002, **and** Statistics Canada. (2003b). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

Figures 13 and 14 represent those people reporting an Aboriginal identity as a proportion of all of the people living in selected Census Metropolitan Areas (CMA's) in Canada. Figure 13 reveals that, of the major CMA's (those with populations over 100,000), Saskatoon ranked first for its Aboriginal proportion of its total population in both the 1996 and 2001 Census counts, with 16,165 Aboriginal peoples making up 7.5 per cent of the total Saskatoon population (1996) and 20,275 Aboriginal peoples making up 9.1 per cent of the total Saskatoon population (2001). Regina ranked 3rd both years. Prince Albert ranked highest of all Metropolitan Areas (MA's, 10,000 population and higher) with an Aboriginal proportional representation of 24.9 per cent (1996) and 29.2 per cent (2001).

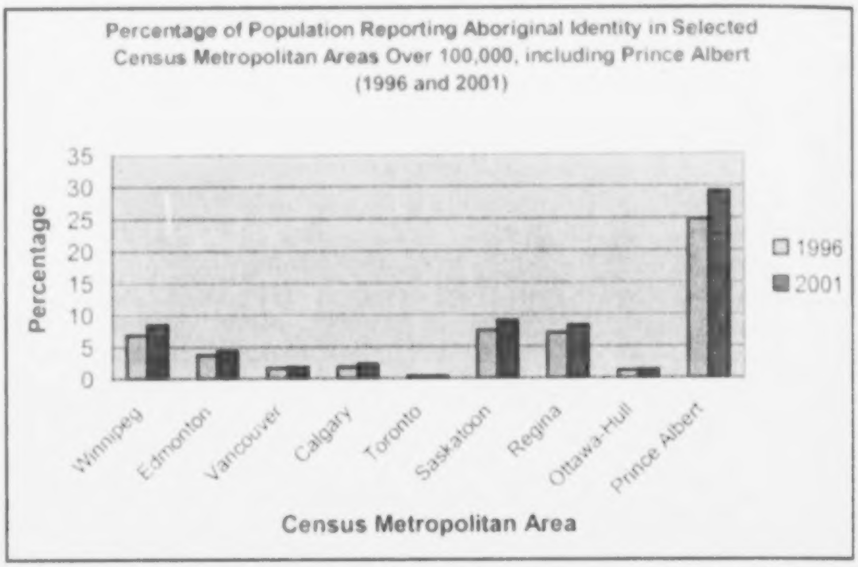


Figure 13–Source: Statistics Canada. (2003b). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

Although Saskatoon, Winnipeg, and Regina ranked 1st, 2nd, and 3rd for their Aboriginal proportion of the total population, Winnipeg, Edmonton, and Vancouver ranked 1st, 2nd, and 3rd in actual numbers for their Aboriginal population with real numbers of 55,755 and 40,930 and 36,860 respectively.

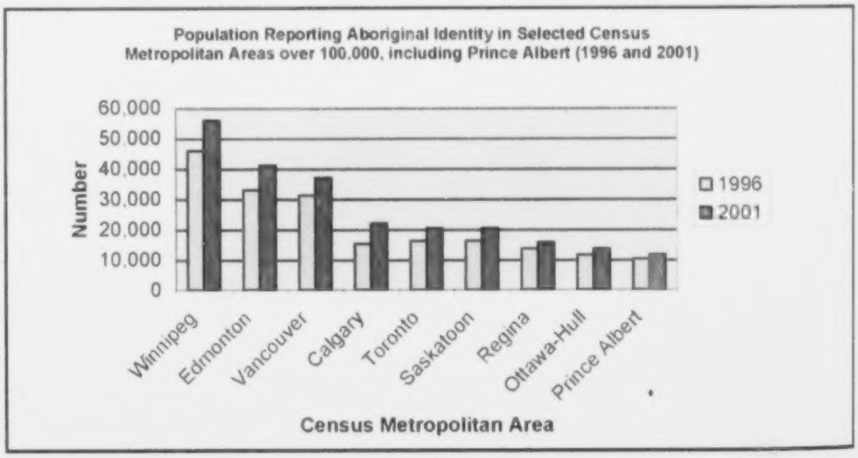


Figure 14–Source: Statistics Canada. (2003). 2001 Census: Aboriginal Identity Population, 2001 Counts, for Canada, Provinces and Territories – 20% Sample Data.

The following figure and table project population numbers for Aboriginal and non-Aboriginal peoples in Saskatchewan. The total number of non-Aboriginal peoples is forecast to decrease steadily over the next 20 years, from 978,938 in our base Census year (2001) to 833,813 in 2021. Alternatively, the Aboriginal population is forecast to increase from 130,195 in our base Census year (2001) to 201,600 in 2021 (see Figure 15).

The Aboriginal proportion of the total population is forecast to grow from 13.3 per cent in 2001 to 19.5 per cent in 2021, while the non-Aboriginal proportion of the total is forecast to decrease from 86.7 per cent in 2001 to 80.5 per cent in 2021. The proportion of male to female Aboriginal persons is forecast to remain fairly steady over the 20-year period (see Table 1). The projected growth rates of North American Indian and Metis peoples are presented in Table 2.

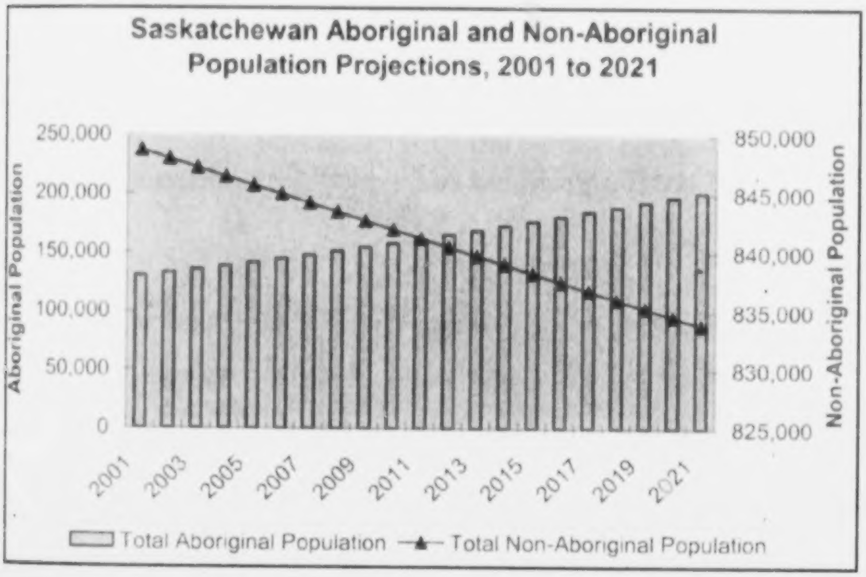


Figure 15

Following Table 1, Figures 16 and 17 show in graphic form the population forecasts for Saskatchewan, 2001 and 2021.

Table 1-Saskatchewan Aboriginal and Non-Aboriginal Population Projections: From 2001 (base year) to 2021

Year	Ttl Abor Males	Ttl Abor Females	Total Aboriginal Population	Total Non-Aboriginal Population	Total Sask Population	Percentage of Aboriginal Pop	Percentage of Non-Aboriginal Pop
2001	64056	66139	130195	848743	978938	13.30%	86.70%
2002	65409	67536	132946	847990	980936	13.55%	86.45%
2003	66806	68978	135784	847238	983022	13.81%	86.19%
2004	68241	70461	138702	846487	985188	14.08%	85.92%
2005	69723	71991	141714	845736	987449	14.35%	85.65%
2006	71256	73574	144830	844986	989816	14.63%	85.37%
2007	72842	75210	148052	844236	992288	14.92%	85.08%
2008	74469	76891	151361	843487	994848	15.21%	84.79%
2009	76142	78618	154761	842739	997500	15.51%	84.49%
2010	77869	80401	158270	841991	1000262	15.82%	84.18%
2011	79639	82229	161868	841245	1003112	16.14%	83.86%
2012	81456	84105	165560	840498	1006059	16.46%	83.54%
2013	83313	86022	169336	839753	1009088	16.78%	83.22%
2014	85208	87979	173186	839008	1012194	17.11%	82.89%
2015	87144	89978	177122	838264	1015386	17.44%	82.56%
2016	89099	91997	181096	837520	1018616	17.78%	82.22%
2017	91077	94039	185116	836777	1021894	18.12%	81.88%
2018	93073	96100	189173	836035	1025209	18.45%	81.55%
2019	95089	98182	193271	835294	1028564	18.79%	81.21%
2020	97129	100288	197417	834553	1031970	19.13%	80.87%
2021	99187	102413	201600	833813	1035412	19.47%	80.53%

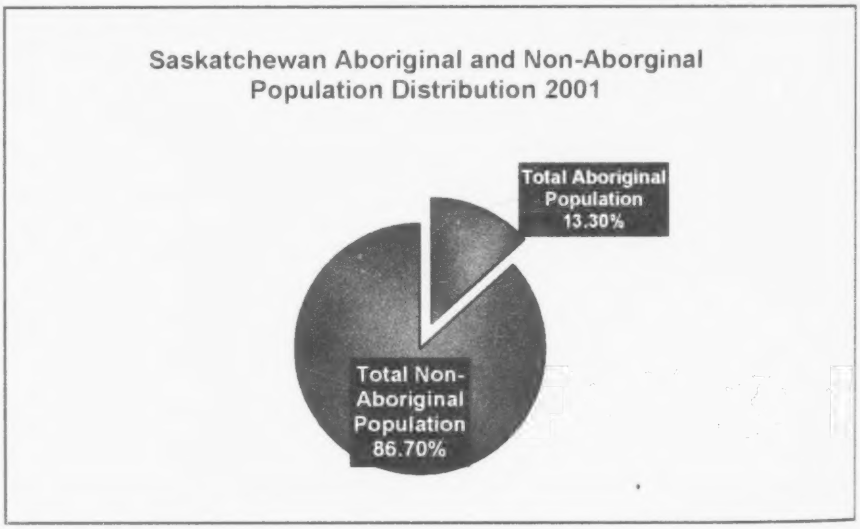


Figure 16

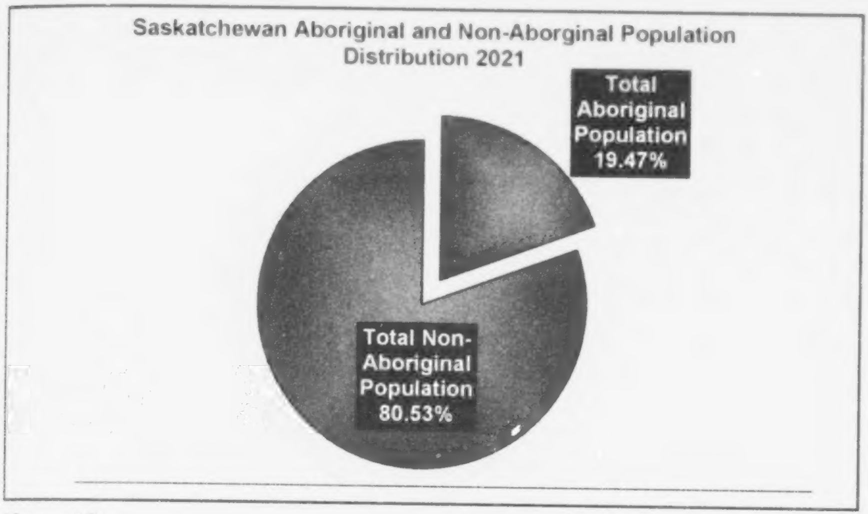


Figure 17

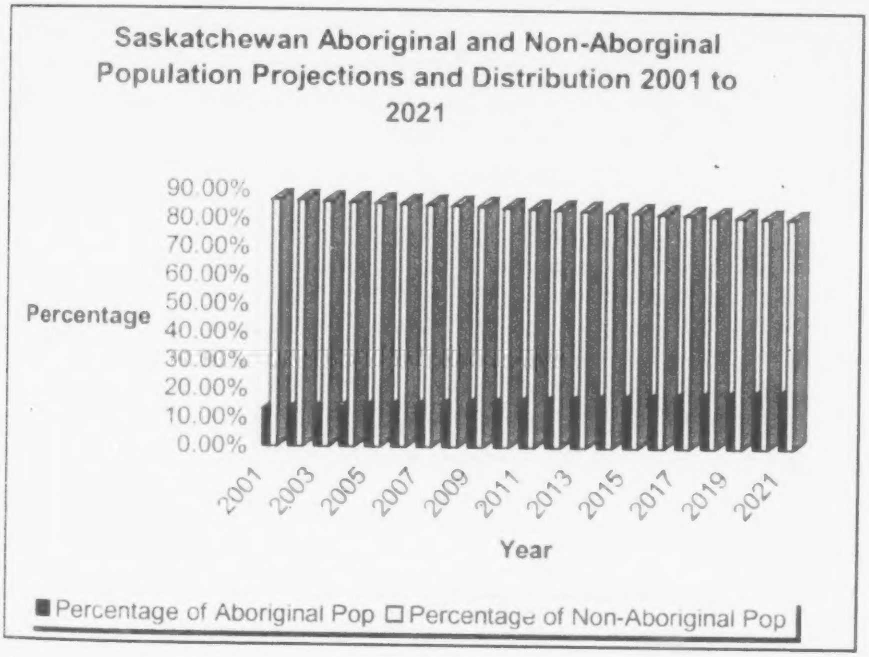


Figure 18

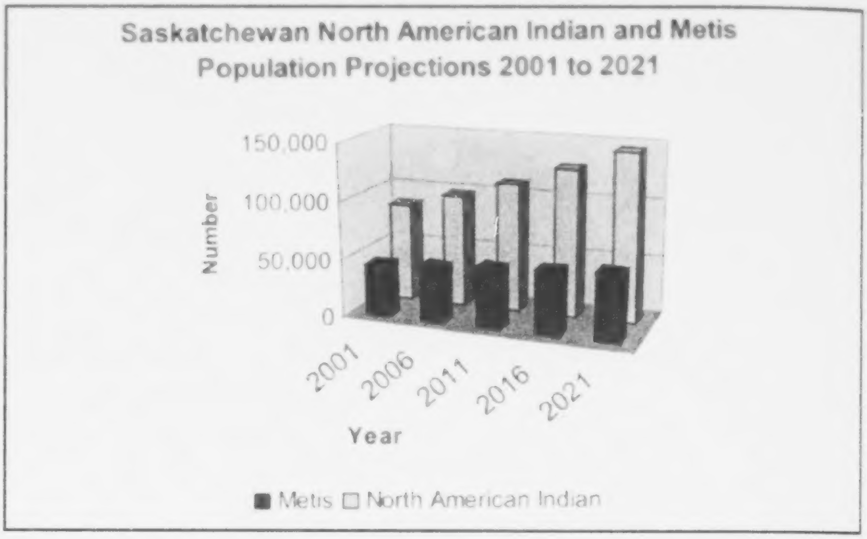


Figure 19

Figure 19 compares the growth rate forecasts of Metis and North American Indian populations in Saskatchewan, 2001 to 2021. The Metis population is smaller and predicted to increase at a slower rate than the North American Indian population. In 2001 the Metis and Native North American populations totalled 44,640 and 85,555 respectively. These numbers are forecast to grow in 2021 to 57,719 (Metis) and 143,880 (North American Indian). Figure 20 profiles the North American Indian, Metis and Total Aboriginal population growth rates. Figure 21 and Table 2 present population projections for Metis and North American Indian population in Saskatchewan, 2001 to 2021. They project that the Metis proportion of the total Aboriginal population in Saskatchewan will decline from 2001 to 2021, due to a natural growth rate that is lower than the Native North American natural growth rate.

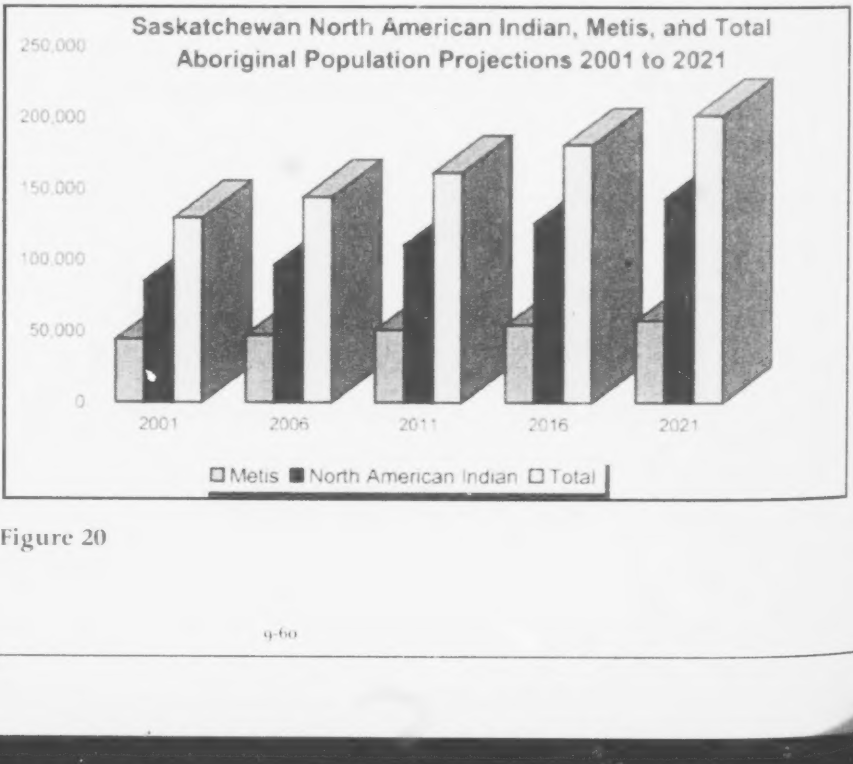


Figure 20

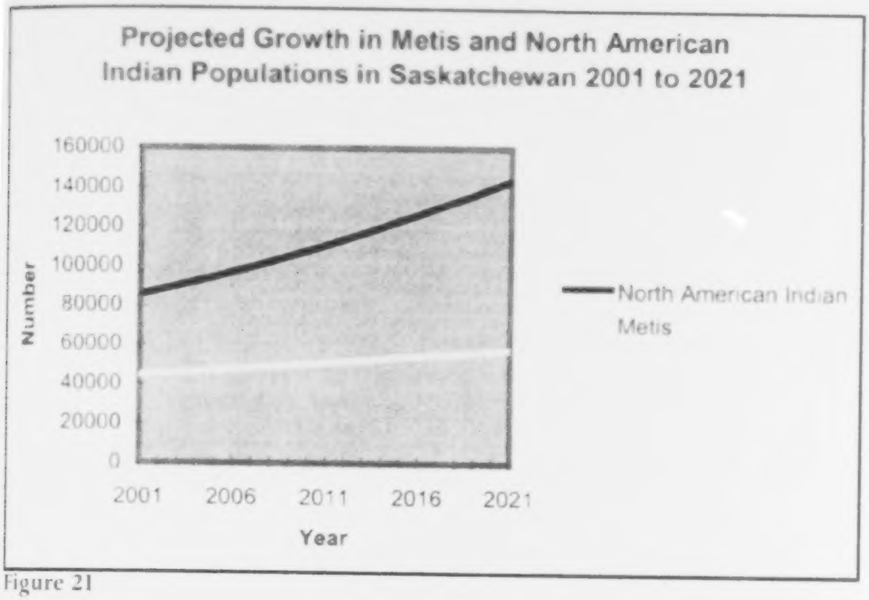


Figure 21

Table 2-Saskatchewan North American Indian and Metis Populations: From 2001 (base year) to 2021

Year	N.A. Indian	Métis	Total Aboriginal Population	% Métis over total Aboriginal	% N.A. Indian over total Aboriginal
2001	85555	44640	130195	34.29%	65.71%
2002	87710	45236	132946	34.03%	65.97%
2003	89947	45837	135784	33.76%	66.24%
2004	92255	46447	138702	33.49%	66.51%
2005	94635	47078	141714	33.22%	66.78%
2006	97106	47724	144830	32.95%	67.05%
2007	99668	48384	148052	32.68%	67.32%
2008	102314	49046	151361	32.40%	67.60%
2009	105047	49714	154761	32.12%	67.88%
2010	107876	50394	158270	31.84%	68.16%
2011	110787	51080	161868	31.56%	68.44%
2012	113781	51780	165560	31.28%	68.72%
2013	116858	52478	169336	30.99%	69.01%
2014	120020	53167	173186	30.70%	69.30%
2015	123267	53856	177122	30.41%	69.59%
2016	126558	54538	181096	30.12%	69.88%
2017	129915	55201	185116	29.82%	70.18%
2018	133322	55851	189173	29.52%	70.48%
2019	136780	56491	193271	29.23%	70.77%
2020	140305	57112	197417	28.93%	71.07%
2021	143880	57719	201600	28.63%	71.37%

The following three figures complete this section of the report by including population pyramids that represent Aboriginal and non-Aboriginal populations of Saskatchewan in varying ways and over time. Figure 22 compares the proportional representation of both the Aboriginal and non-Aboriginal as they were in 2001. Figures 23 and 24 compare the Aboriginal population of 2001 to the projected Aboriginal population of 2021 in proportional and real terms. It is important to note the movement of the Aboriginal baby boom from a very young cohort in 2001 to a more mature cohort in 2021. The male portion of the population is represented on the left-hand side while the female portion is represented on the right-hand side of the following population pyramids.

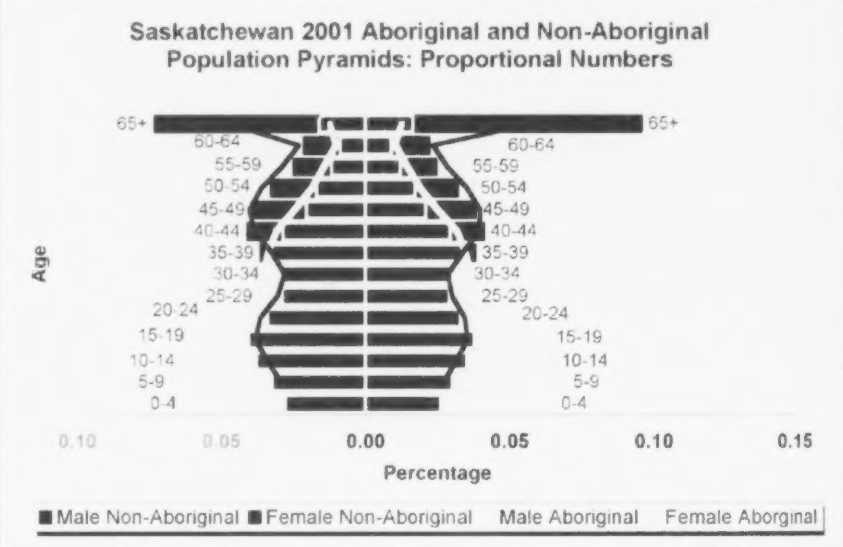


Figure 22

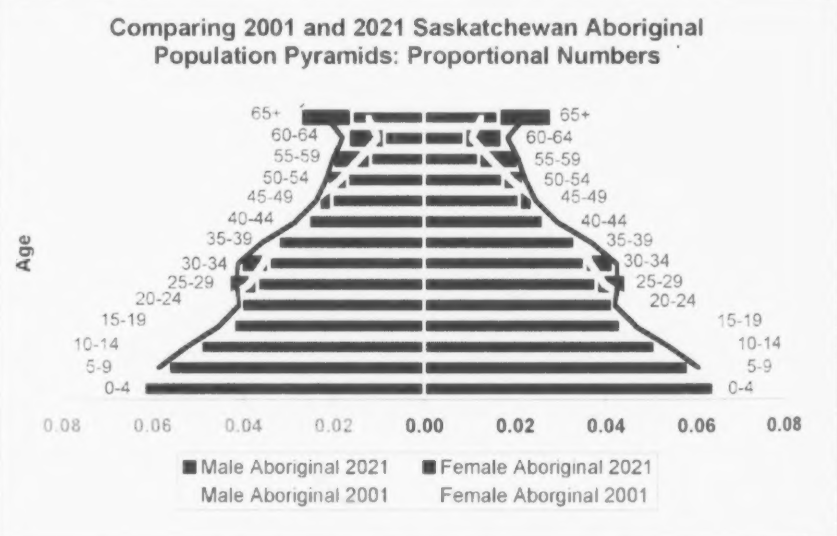


Figure 23

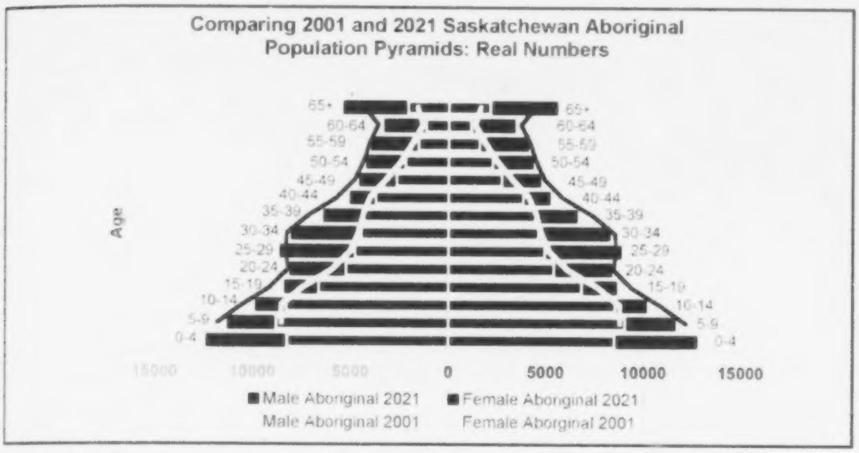


Figure 24

In this demographic and statistical presentation of Aboriginal and non-Aboriginal peoples, the data portrays the Aboriginal peoples of Canada as a young and growing sector of the overall Canadian population. In Saskatchewan, Aboriginal peoples (primarily Metis and First Nations) are an even younger and also growing sector of the provincial population. Because of the population makeup of the province, the growth in the Aboriginal population will have a qualitatively significant effect on the population profile. Over the next twenty years, almost 20 per cent of the provincial population will be Metis and First Nation. In particular, the Aboriginal proportion of the population of the cities in the province will continue to grow, though not to the extent of some alarmist prognostications that stress "mass exoduses" from reserves to urban centres. The average age of Aboriginal peoples in the province will increase slightly, but the provincial Aboriginal population as a whole will remain a young population. This age characteristic will change, but not for 20 to 40 years, when the Aboriginal baby boom moves from a cohort of children, teenagers, and young adults, to a cohort of experienced and increasingly well-educated young adults 20 to 35 years of age prepared for leadership and other roles in the provincial economy.

Demographic analyses and projections illustrate in general terms the profile of Aboriginal communities and populations in Canada and Saskatchewan. Out of context, the numbers do not necessarily illustrate their lived reality or the nature of the systemic barriers that First Nations and Metis people in Canada face, the force of the legal definition of identity, implications of the reinstatement of status via Bill C-31 and of self-reporting, and the power of statistical tracking. Demographic representation remains determined and constrained by the forms of data collection, obscuring the rich resources, the capacities, successes, and achievements of Aboriginal adults and youth. Those that develop policy for justice, health, education, and other areas must understand the limitations of current reporting on Aboriginal conditions and challenges, using both the qualitative measures and discussion and the demographic profiles and projections in this section. Policy makers must draw on the range of available measures and work to expand capacities to evaluate effectively, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) so as to better understand key indicators and direct us to areas for and means of change. Aboriginal peoples are much more than their problems, issues, and statistics.

5.0 JUSTICE SYSTEM PARTICIPATION AND COSTS

5.1 General Trends and Issues

If the law has never been as neutral as its founding myths would suggest, it is a powerful measure of the norms and values of the wider culture that it shapes and is shaped by. Indeed the common sense of the reasonable person has long been the yardstick of humane and just decision-making. Yet neither the law nor the cultural context is ever as singular, stable, or self-evident as such self-images suggest—and hence the conflict over the role and ramifications of criminal law, debates about rights and remediation, rehabilitation, retribution, or restoration, deterrence or domination. The law is always making choices, not least in how it construes criminality, what is deemed legitimate and what illegitimate behaviour, and the choices change over time and with significant consequences for groups marginalized by race, ethnicity, gender, class, age, abilities, and sexuality.

The complex intersection of law and culture continues to shape what crimes are reported and why some are reported and some not. In interpreting participation rates, it is important to stress that crime rates do not include all crimes, but reflect complaints of criminal conduct that are substantiated by police investigation. In addition to systemic factors related to labelling, profiling, and harassing of "targeted" groups, it is also the case that different jurisdictions have different reporting methods that make it necessary to read the "evidence" with some caution. For example, some jurisdictions base identification on nothing more scientific than police perception of offender ethnicity.

Further, surveys suggest only 50 per cent of crime is reported (62 per cent of break and enters, 60 per cent of motor vehicle/parts theft, 46 per cent of robberies, and 37 per cent of assaults); 78 per cent of sexual assaults and 67 per cent of household thefts go unreported; assaults are far more likely to be reported than fraud. And history and geography significantly impact on participation rates of Northern Aboriginal peoples (Saskatchewan Justice, 2003).

In part because of an aging population and decreasing numbers in the 15-24 age group responsible for 45 per cent of property crime and 31 per cent of violent crime, national crime statistics show a steady decline since 1990, excepting a 1 per cent increase in 2000-2001. Just as a non-Aboriginal baby boom post World War Two reached 18-29 years of age and became increasingly urbanized in the 1960s to 1980s, so crime rates experienced sharp increases. That pattern is repeated in the Aboriginal baby boom and urbanization of recent years (Boe, 2002).

Though the national crime rate has been steadily decreasing by about three per cent per year since 1990, with an exceptional rise of one per cent, 2000-2001 (Taylor-Butts, 2002), it is important to recall that the annual reporting of crime statistics, no matter how good the news, has a hard time competing with the daily reports of individual crime impacting on local communities—and especially when "contextual information" is rarely part of the "media lens," when pressure on reporters to meet deadlines exacerbates the situation, and when reassuring comment on low violent crime rates is unlikely to be read sympathetically by those experiencing loss (Roberts, 2001).

5.1.1 Justice Spending in Canada: Participation Rates and Costs

In the Canadian Centre for Justice Statistics (CCJS) Juristat on *Justice Spending in Canada, 2000/01*, Taylor-Butts (2002) provides an overview of "some of the government expenditures associated with operating five major sectors of the Canadian justice system: policing, courts, legal aid, criminal prosecutions and adult corrections." The Juristat not only reports trends in per capita spending on justice services in Canada (1990/91 to 2000/01), but also highlights spending on justice services in the provinces and territories (over time and by sector) and provides counts of people employed by the justice system (over time, by sector and province/territory). This report provides a general starting point for the analysis of the proportion of participation rates and costs associated with Saskatchewan Aboriginal participation in 2000/01, lending to projection rates for 2002 to 2021 highlighted in Section 5.7. The following overview clarifies how the Canadian Centre for Justice Statistics (CCJS) describes justice spending in Canada.

> **About Justice Spending**
>
> **The Canadian Centre for Justice Statistics collects resource and expenditure data for five justice sectors: policing, courts, legal aid, criminal prosecutions and adult corrections. In the case of youth corrections, national estimates on spending are available from Justice Canada up to 1998/99.**
>
> *Police expenditures* **include actual operating expenditures that are paid from police force budgets, such as salaries and wages. Revenues, recoveries and capital expenditures are excluded. All police agencies are covered, with the exception of specialized enforcement areas such as the Canadian Security Intelligence Service. Personnel involved in the enforcement of specific statutes in the areas of income tax, customs and excise, immigration, fisheries and wildlife are also excluded.**
>
> *Court expenditures* **include all operating expenditures (salaries and benefits) for judges and support staff in the Supreme Court, the Tax Court, the Federal Court of Canada, the Office of the Commissioner for Federal Judicial Affairs, the Judicial Council and all courts in the provinces and territories. Excluded are maintenance enforcement services, building occupancy costs, prisoner escort services, and costs associated with coroner inquests.**
>
> *Legal aid plan expenditures* **include payments made to private law firms and legal aid plan staff for the provision of**

legal advice and representation in criminal and civil matters. Law office and community law clinic expenses (staff salaries, benefits and overhead) are included, as are all central administrative expenses. These expenditures represent spending by legal aid plans only. It should be noted that this spending may not equal government contributions to legal aid plans in a given year.

Criminal prosecution expenditures include all operating expenditures (salaries and benefits) for full-time and contract lawyers, who conduct the prosecution of criminal cases on behalf of the Crown. All direct support staff costs are also included.

Adult correctional expenditures include operating expenditures for federal and provincial correctional facilities (salaries and benefits for custodial and non-custodial staff), community supervision (probation, parole, bail supervision), headquarters, and parole boards (federal and provincial).

Youth correctional expenditures are estimates provided by Justice Canada and are likely an underestimate of the total costs of youth correctional expenditures. The figures include youth alternative measures, custodial services, probation supervision, judicial interim release supervision, medical and psychological reports, post adjudication detention, pre-disposition reports, review boards and screening services. Excluded are those costs related to pre-trial detention (remand and lock-ups) and the adjudication of young offenders for provincial offences.

Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

Taylor-Butts (2002) shows that, for the past 20 years, justice costs have accounted for about 3 per cent of total government expenditures: significantly less than government expenditures on social services, health care, education, and debt charges (see the following figure).

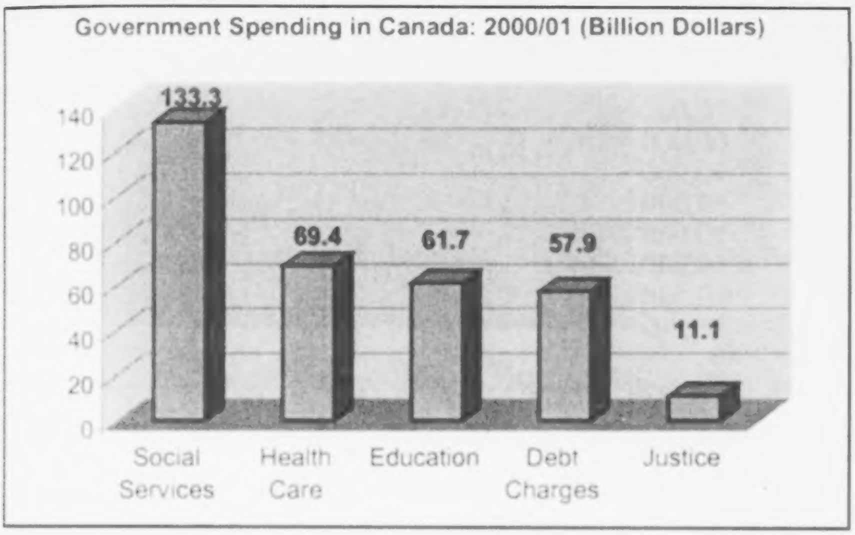
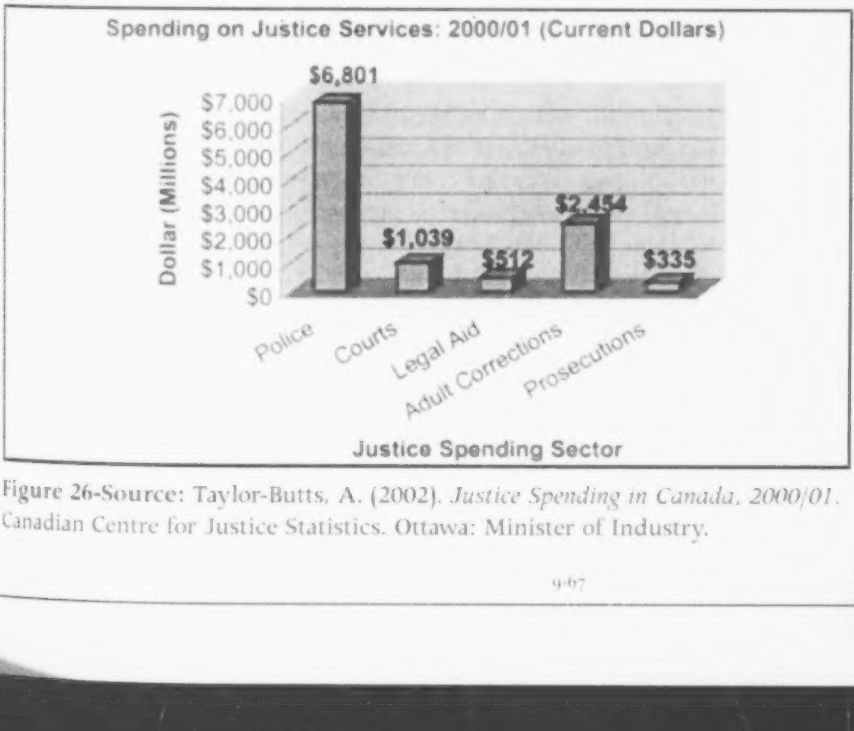


Figure 25-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

According to Taylor-Butts (2002), Canadian governments spent a total of approximately $11.14 billion on the five sectors of justice in 2000/01: Police ($6.801 billion or $221 per capita), Courts ($1.039 billion or $34 per capita), Legal Aid Plans ($512 million or $17 per capita), Adult Corrections ($2.454 billion or $80 per capita), and Prosecutions ($335 million or $11 per capita). The distribution of these costs over the five sectors is presented in the following figure. It is important to note that Youth Corrections are not available beyond 1998/99.



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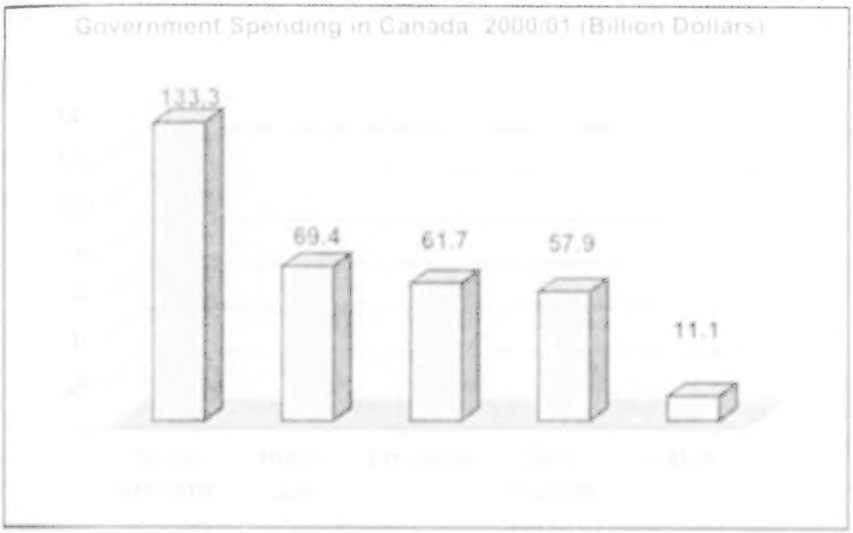

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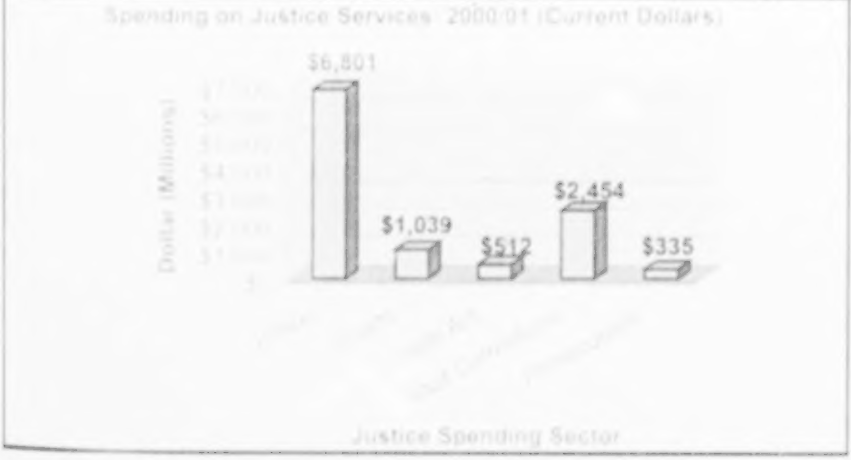

Figure 26-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01*. Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

Approximately 126,924 people are employed by the justice system in Canada (2000/01). See the following figure.

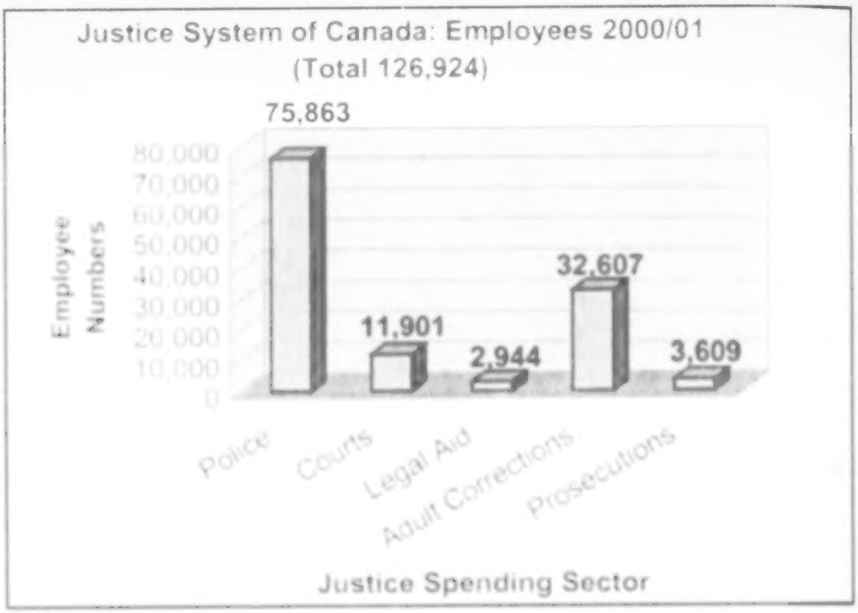

Figure 27-Source: Taylor-Butts, A. (2002). *Justice Spending in Canada, 2000/01.* Canadian Centre for Justice Statistics. Ottawa: Minister of Industry.

The Canadian Centre for Justice Statistics is the administrative arm of the national Justice Statistics Initiative, and a division of Statistics Canada.

> **The Canadian Centre for Justice Statistics**
>
> **In 1981, the chief Statistician and the Federal and Provincial Deputy Ministers with responsibility for justice in Canada began the National Justice Statistics Initiative in response to the long time absence of a comprehensive system of comparable national justice statistics. The purpose of the Initiative is to collect and disseminate justice statistics and information to support the administration of justice in Canada, and to ensure that accurate information regarding the nature and extent of crime and the administration of civil and criminal justice is available to the Canadian public. The Canadian Centre for Justice Statistics (CCJS) is the administrative arm of the Initiative and a division of Statistics Canada. With guidance from its provincial/federal committees, the CCJS develops and implements statistical surveys, and provides information, products and services to both the partners in the Initiative and the public.**
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> Source: Statistics Canada (1997). Graphical overview of crime and the administration of criminal justice in Canada.

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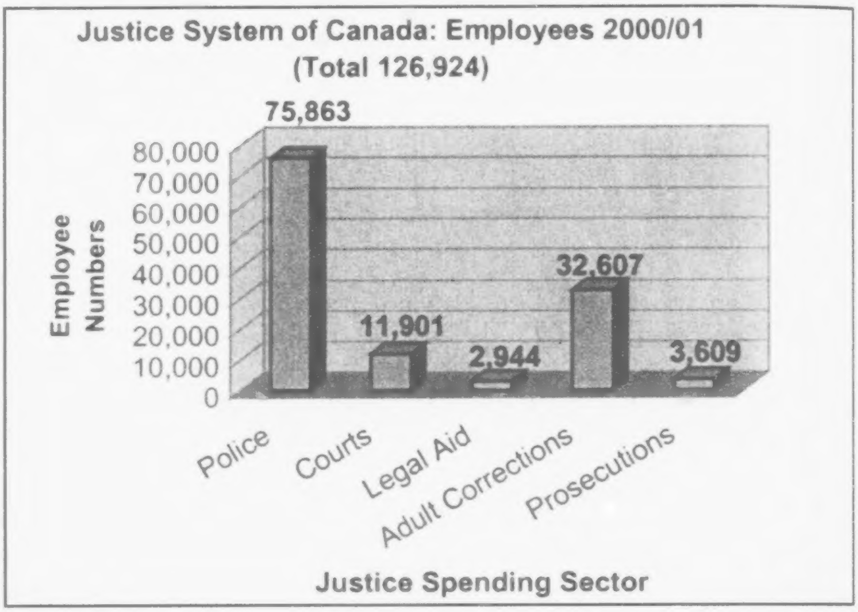

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5.1.2 First Nations and Metis Peoples

> **Canada must take the measures needed to significantly reduce the percentage of Aboriginal people entering the criminal justice system, so that within a generation it is no higher than the Canadian average.** (Canadian Government, 2001)

Even if cultural, spiritual, and political activities of Aboriginal peoples are no longer criminalized and they may now hire lawyers to argue cases against the Crown, a legacy of distrust and alienation continues to shape participation in the criminal justice system. In the post-World War Two period, Aboriginal participation in the justice system increased dramatically because of new demographics, new technology, and new justice system practices adding to rising expectations of Aboriginal veterans returning from the war. If high post-war birth numbers and increasing numbers entering teenage and young adult years (18-29) associated with risk were significant (Boe, 2002), other factors contributing to higher Aboriginal participation included: new energetic policing practices and agreements with the Royal Canadian Mounted Police to enforce Canadian law consistently where Aboriginal law had previously prevailed, as well as increased mobility with new highways and transportation, greater access to alcohol, and close oversight of social and family legislation (Hamilton and Sinclair, 1991).

Unusual surveillance, targeting of marginalized groups, selective policing, as well as prosecutorial discretion and "mutual distrust between police and Aboriginal people" added to the so-called "crime wave" (Quigley, 1994). And the result is that "generations of young people have a much greater chance of being jailed than of completing their education or of obtaining meaningful employment. The socioeconomic effects of that loss of productivity are profound" (Quigley, 1994). And the impacts go well beyond individuals, families, and communities.

Above all, the system requires public confidence and trust among all citizens. But a unique set of historical circumstances (including colonization and racism) combine with current socio-economic disadvantage to influence patterns of offending: Saskatoon and Regina, for instance, number among cities with the highest disparities between Aboriginal peoples and the general population (Saskatchewan Justice, 2003). And crime rates are conspicuously higher in Saskatoon and Regina than in comparable Prairie cities. When Saskatoon, for instance, increased its proportion of the 15-24 age cohort by 11.94 per cent between 1992 and 2002, the crime rate increased by 12.16 per cent (CCJS).

Though a Statistics Canada General Social Survey portrays Saskatchewan as comparable to other provinces in terms of resident safety, the survey obscures differential effects of crime and victimization. While the three territories represent the highest criminal justice participation rates, Saskatchewan is 1.8 times the national average. Though only 10 per cent of the population in Regina and Prince Albert combined, Aboriginal peoples constituted 47 per cent of victims of violent crime. In 2001-2002, 77 per cent of those admitted to

Saskatchewan correctional centres and 55 per cent of those in federal corrections in 2001 were Aboriginal peoples; in other words, 1 in 7 Aboriginal men and 1 in 50 Aboriginal women were under provincial or federal correctional supervision, 2000-2001. In addition, 75 per cent of youth in custody in 2000-2001 were Aboriginal (Saskatchewan Justice, 2003).

If poverty (together with unemployment and under-education) has meant that many First Nations and Metis are considered poor candidates for probation on the basis of "neutral" yet "legally relevant criteria" (Quigley, 1994), others unable to pay fines have ended up in jail before amendments to the Criminal Code in 1996 ensured that very few people in Saskatchewan go to prison for non-payment of fines. Yet others plead guilty to access programming in prisons—or simply to get food and shelter. And Aboriginal peoples have often been "model prisoners" because they have been acculturated to institutional settings. If they often prove "more amenable and less demanding" than the rest of the population, they have ironically good reason:

> **For many Indians the food, lodging and facilities are superior to what they can hope to find on the outside and, even more significantly, for some Indians prison represents their only experience in social equality with non-Indians.**
> (Canadian Corrections, 1967)

The result is that there is less incentive for some "to avoid an early return to the security of a superior material existence within the walls." For others the conditions of parole set standards "designed for urban dwellers in a wage-employment economy" that are hence beyond the reach of those who have little expectation of devising plans including secure employment far less residence in areas accessible to the required supervision (Canadian Corrections, 1967). And the fact that those who speak only an Aboriginal language are excluded from jury duty (like all who do not speak the trial language of English or French) adds to inequities and Elders are not always given the respect accorded priests and ministers or other professionals (CCJA, 2000).

If mainstream legal conditions betray cultural biases in these particulars, they also do so in the comprehensive tendency of the administration of justice to specialization—to fragmentation of practices. Little Bear (1994) gives the example of the sixty-year-old Aboriginal woman with a drinking problem thrown in RCMP cells no fewer than 897 times. When the police, judge, and prosecutors were asked why, the answer was:

> **"We only pick people up. We're not social workers, you know." The judge said, "All I determine is guilt. I don't care about whatever else happens." The prosecutor said, "I don't know what the police do, but I only deal with the files that are given to me on court day."**

The problem remains that there was "no cross-boundary communication" and victims are abstracted from their broader social and other circumstances—

circumstances beyond the experience or understanding of most of the legal profession (Jackson, 1988a). Ed Campbell of The Pas likewise argued, "There's no understanding of that [values and circumstances] in a lot of the communities by the enforcers, by the law, by the judges that make sentences. The only thing they know is that the person is coming up on the docket and he has to be charged according to the letters or the figures or statistics, whatever they have. That's the only understanding they have" (qtd. in Hamilton and Sinclair, 1999). In the case of Yvonne Johnson at trial in the Wetaskiwin Court of Queen's Bench, 1991, the crown prosecutor's words to a jury of her "peers" (drawn from the conservative white community of the Alberta Bible belt) speak to the depth of the incomprehension:

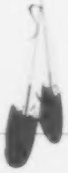
> *These* **people . . . are very different from you and me.**
> (Wiebe & Johnson, 1998)

And defence counsel Brian Beresh ensured that ("like her ancestor Big Bear at his trial for treason-felony"), "she did not speak a word in her own defence." If Beresh was concerned about possible conflicts with the evidence of her co-accused, he also concluded she should not go on the stand because of her appearance: "Yvonne does not present well; [she] does not look too good". (Wiebe & Johnson, 1998).

If poverty brings Aboriginal people into the system, poverty also makes access to justice problematic, especially when witnesses or the accused may be "left to find their way as far as 110 kilometres, where there is no public transportation and few have vehicles or the resources to take taxis" (Saskatchewan Indian Justice Review Committee 41). Or when they receive only the briefest of interviews with legal counsel in the most deplorable of conditions (including washrooms).

Such evidence is also given by a God's River band councillor and volunteer probation officer addressing the Manitoba Justice Inquiry:

> **A round trip [by air to the circuit court 32 kilometres away at God's River Narrows] costs $240. If a person knows they are innocent and can prove it by having a witness present it means they have to pay for the witness to go to the Narrows to testify. If the witness is employed it sometimes means they have to pay for lost wages too. So it is often easier to just plead guilty and pay a fine if the charge isn't too serious. . . .**
>
> **More often than not our people travel to the Narrows, wait all day and then are told their case is remanded. This means they have to go home, wait until the appointed time and try to save enough money to go back again. And when we go back we stand a good chance of being remanded again. This can happen many times to the same person.** (Hamilton & Sinclair, 1991)



5.1.3 First Nations and Metis Women

> **Women have been a footnote in that male-defined [Canadian prison] system. And if women are the footnote, then Aboriginal women are the footnote to the footnote.** (Monture, 2003)

> **One area in which women have equality in Canada—without trying—is in the national system of punishment. The nominal equality translates itself into injustice. But, lest the injustice fail to be absolute, the equality ends and reverts to outright discrimination when it comes to providing constructive positives—recreation, programmes, basic facilities and space—for women.** (Parliamentary Subcommittee Report to Parliament; qtd. in Jackson [1988a])

If First Nations and Metis women have experienced multiple forms of marginalization and discrimination (on the basis of their gender, ethnicity, age, and class) in the wider mainstream society, the law has played a major role. One of the "gifts" of colonial history, patriarchy brought new cultural values and standards and entrenched them in the Indian Act—with profoundly destructive consequences for the stereotyping and segregation of previously powerful and venerated Aboriginal women. Their symbolic representation has sustained decades of "physical, psychological and sexual abuse": "The portrayal of the squaw," wrote Emma LaRocque, "is one of the most degraded, most despised and most dehumanized anywhere in the world" (qtd. in Hamilton and Sinclair, 1991, 479). And First Nations and Metis women have suffered disproportionately when racism became internalized within Aboriginal communities as sexism (Maracle, 1994). The violent legacy is brutally clear to inmates in Kingston Prison for Women:

> **The critical difference is racism. We are born to it and spend our lives facing it. Racism lies at the root of our life experiences. The effect is violence, violence against us, and in turn our own violence.** (Sugar & Fox, 1990; qtd. in Hamilton & Sinclair, 1991)

According to the Canadian Association of Elizabeth Fry Societies (1998-1999), Yvonne Johnson's *Stolen Life: The Journey of a Cree Woman* (co-authored with Rudy Wiebe) is a book that should be required reading for "all who choose to work in and around our criminal (in)justice system" because it causes readers to "confront the ripped and raw results of colonization, racism, misogyny, classism and poverty on a proud and courageous woman. It also spurs to action and inspires a righteous rage that will help to fuel us in the future." Only with such supplementary reading—with such qualitative measures, First Nations and Metis perspectives on meaning and value, and the costs and benefits of alternatives—will the monetary costs become meaningful.

Such cycles of violence remain beyond the understanding or experience of many who administer the justice system—whether officers attending rape victims or judges sentencing offenders—and the result is clear in cases such as that of Jamie Tanis Gladue, a nineteen-year-old Aboriginal woman sentenced to three years' imprisonment for manslaughter in the killing of her twenty-year-old common law husband (*R. v. Gladue* [1999]). Despite the court's best efforts to give the mandated "fair, large and liberal construction and interpretation" of section 718.2 (e) of the Criminal Code, the court's determined impartiality ironically blinds it to persistent biases that read to confirm and not complicate or rethink beliefs about Aboriginal difference, relevant "circumstances" and "Aboriginal heritage". In its thinking, the court remains overly positivist in its understanding of the meaning of a life, identity, intentions, and circumstances to account for what Macklem (2001) calls the "social facts" of "The Indigenous Difference": "Aboriginal cultural difference, Aboriginal prior occupancy, Aboriginal prior sovereignty, and Aboriginal participation in a treaty process." The court presumes to know an overly singular "Aboriginal perspective" and an "Aboriginal heritage" associated with a "network of support and interaction" and dissociated from a history of colonial violence.

Gladue's life is abstracted and reduced to social symptoms (poverty, abuse, educational and economic disadvantage) severed from their historical sources just as individual experience is isolated from collective, private from public, present from past circumstances. Domestic abuse is thus understood as distinct from the violent abuse and brutal realities of government-sponsored and church-run residential schools or their violent legacies within Aboriginal communities. Such cultural misrepresentation produces all too directly a weak form of mitigation, based on misunderstood causalities and connections—and the tragic over-representation of Aboriginal peoples in the prison population (Findlay, 2001).

And the Elizabeth Fry Societies Annual Report 1998-1999 expressed particular frustration with a persistent tendency to "infantilise or scapegoat" and criminalize women and the related problem of classifying mental health disabilities as a security risk: "equating mental health disabilities with risks only serves to perpetuate a social construction of persons with mental disabilities as dangerous. This is precisely the kind of stereotyping which is prohibited by the equality provisions of the Charter."

Without much more comprehensive and concerted attacks on the sources of Aboriginal women's participation in the justice system, there can be no justice for First Nations and Metis women in Canada:

> **No amount of tinkering with prisons can heal the before-prison lives of the Aboriginal women who live or have lived within their walls. Prison cannot remedy the problem of the poverty of reserves. It cannot deal with immediate or historical memories of the genocide that Europeans worked upon our people. It cannot remedy violence, alcohol abuse, sexual assault during childhood, rape and other violence Aboriginal women experience at the hands of men. Prison**

> **cannot heal the past abuse of foster homes, or the indifference and racism of Canada's justice system in its dealings with Aboriginal people.** (Sugar & Fox, 1990)

5.1.4 First Nations and Metis Youth

> **Disenfranchisement • exclusion • oppression • rejection • marginalization • racialization • institutionalization • vulnerability • harassment • threat • trauma • hopelessness • fear**

If these are not the first words that come to mind when the general public thinks about First Nations and Metis youth involved in the criminal justice system, they are words that are much closer to the daily lived experience of such youth and the root causes of their participation in the criminal justice system. In a submission to the Saskatchewan Indian Justice Review Committee, the Saskatchewan Coalition Against Racism was blunt about the Aboriginal youth experience of justice:

> **Perhaps the saddest fact, and the best starting point for a review of Aboriginal justice, is the reality that Aboriginal youth have a better chance of going to jail than they have of completing high school. The fact is that Aboriginal youth are routinely streamed into lives of unemployment, poverty, incarceration, and suicide. . . . All too often crime is used as a mechanism of escape from unbearable living conditions on-reserves or in foster homes.** (Saskatchewan Indian Justice Review Committee, 1992)

In fearful responses based on misinformation and stereotype, however, the general public is much more likely to conjure up images of youthful behaviours deriving from disrespect, irreverence, irresponsibility, even violent confrontation, or focus on the superficial symbols of youthful difference and dissent — the music, clothing, and body adornments widely associated with gang and other activity.

That Aboriginal youth represent 75 per cent of inmates in youth facilities when Aboriginal people represent only 15 per cent of the Saskatchewan population is indeed a damaging set of statistics. Yet fears about youth crime escalating beyond control might be measured against declining figures in most jurisdictions. Or fears about violent crime might be relieved if people understood that more than 50 per cent of those incarcerated are there for property crimes and not acts of violence. Or concerns to increase penalties and get tough on crime might be rethought if measured against Quebec's progressive actions that have reduced youth crime to the lowest rates in Canada. That Saskatchewan's high figures prevail in the context of record-breaking incarceration of young offenders speaks for itself (Green & Healy, 2003).

To focus on symptoms, however, is to reveal nothing of underlying sources of superficial behaviours, of the motivations of youth, of the hidden scars, or risk factors they face (FSIN, 2003). Childhood poverty is but one factor with implications for health, education, and justice participation (Lee, 2000). Involvement in the child welfare system is another indicator, with one study identifying 63 per cent of Aboriginal offenders (36 per cent of non-Aboriginal) who had been adopted or placed in foster or group homes and experienced instability or attachment difficulties (Trevethan, Moore, Auger, MacDonald, & Sinclair, 2002). And a study of childhood aggression showed significant links to exposure to violence in the home: 39 per cent of women reporting assaults by a spouse acknowledged that children were witness to the violence (Hotton, 2003). Yvonne Johnson's poetry (Wiebe & Johnson, 1998) speaks powerfully to the destructive legacy of abuse, to those invisible scars:

> **There's a hole left in my soul**
> **Where I fear to go.**
> **There, once, a child should have lived.**
>
> **Instead anger and hatred moved in.**
> **They smothered the child**
> **With filth and guilt.**

To focus on symptoms without hearkening to the sources is to continue the pattern of enforcement, punishment, and incarceration that alienates and separates youth from supportive environments that might heal, support, respect, and re-connect. When Northerners are incarcerated in the south, for instance, for minor (and often alcohol- or drug-related) crimes, they are not only divided from supports but exposed to new forms of violence. Of one youth returned from jail, a speaker at Meadow Lake commented, "I could just see the fear in his eye. . . . and he said, that's hell over there. He said there's gangs in that jail, I've seen two stabbings, people getting beat up" (Commission, 2003c).

To ignore environmental and other risks is to produce and reproduce gang activities. Delinquency in 12-15 year olds is associated with low commitment to schooling and experience of victimization, though gender differences in patterns of reporting suggest differential intervention strategies (Fitzgerald, 2003). Risk factors are to be found not in the youth but in

- history of colonization.
- the experience of institutionalization, isolation, and socio-economic deprivation.
- disenfranchisement and marginalization.
- inadequate training and education as well as insufficient opportunity.
- heightened media focus.

- labeling and surveillance, police intervention.

- custodial conditions where coercion and intimidation add to gang numbers.

These factors make gangs attractive to youth searching for community, according to Ms. KukdookaTerri Brown, President, Native Women's Association of Canada, addressing the Standing Senate Committee on Aboriginal Peoples:

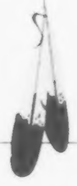
> **With the lack of social cohesion based on common family, community and shared values, many youth develop their own sense of self through the formation of gangs. Aboriginal youth are looking for someone to connect with and a gang of Aboriginal youth provides a safe place. . . . A sense of exclusion based on race and income are common factors that lead to the sustenance of gang culture and activity.** (Chalifoux & Johnson, 2003)

And without safe alternatives, employment, education, treatment centres or programming (like the federal National Native Alcohol and Drug Abuse Program for First Nations and Inuit) and often facing violent retribution, the youth remain captive to gang culture (Chalifoux & Johnson, 2003). Even in its punning title, the FSIN (2003) initiative Alter-Natives to Non-Violence is sensitive to these issues, being careful neither to promote nor to provoke gang activity in its self-identification. And the initiative to divert from gangs and dispel their glamour and mystique is building on the Treaty mandate to foster economic, educational, and social activity and promote public education.

The federal Aboriginal Gang Initiative, funded by the Aboriginal Issues Branch, Correctional Service of Canada, is careful to define what it does and does not do in helping youth make positive change to walk the "Red Road" towards "Mending the Sacred Hoop" of Life. It is clear that it neither displaces nor duplicates other services nor produces dependency. And it wisely acts on the presumption that we share responsibility because "We are all relatives."

> **Far too often the lives of these young people become just another negative statistic. We must resist the temptation to read these figures idly and search ourselves for a deeper understanding of the real suffering and pain that exists behind these numbers. These youth may well be our doctors, poets, artists, leaders, and educators. . . . Minus their potential, we are diminished.** (Chalifoux & Johnson, 2003)

To turn unproductive thinking around, it is important to remember, as Green and Healy (2003) argue, that when the system is being "tough on crime," it is being "Tough on Kids." If faces are attached to the figures that proliferate in reports, then the statistics might become vivid reminders of who has suffered in the name



of justice. Such reminders might clarify what it feels like to be stereotyped, targeted, marginalized, suspected, or harassed. Then people might understand the power of labelling to produce behaviours in youth—labelling that is typically seen as the "neutral" naming of that which pre-exists and takes its source within the subject of the behaviour. By contrast, social scientists are now clarifying the responsibility of those who label:

> **One of the forces that pushed a group from the experimental to the criminal stage was the labelling of the group as criminal by the community at large. Similarly, labelling a child delinquent was thought to increase the likelihood that the child would come to see himself as such, affiliate with other children who had the same label, and display further and increasingly problematic antisocial behaviours. . . . Lemert was particularly concerned with the way that the juvenile court itself created and solidified the definition of the delinquent. Lemert hypothesized that having a juvenile court record and spending time in jail with others who had court records stigmatized the child.**
>
> **Such stigma, represented in modern society as a "record," gets translated into effective handicaps by heightened police surveillance, neighbourhood isolation, lowered receptivity and tolerance by school officials and rejections of youth by prospective employers.** (Hylton; qtd. in FSIN, 1996)

Instead of blaming the victims or denying systemic barriers (for some) and privileges (for others), people might recognize the emotional, physical, spiritual, and mental consequences of institutional barriers and systemic injustice, and "the frustration of not being listened to" (Commission 2003c). Then people might understand the claim of one defendant who lost his parents at a young age, was moved from foster home to foster home, where he experienced physical and sexual abuse, and ended up in closed custody at Kilburn Hall—an experience he described in these telling terms: "I liked Kilburn, it was like a home" (cited in Justice Bayda's dissent, *R. v. Morin* [1995]).

We need to recall challenges Aboriginal youth face in adapting to mainstream culture, while attempting to maintain their traditional culture. They are further challenged in a justice system where unequal treatment persists:

- Aboriginal youth represented 15 per cent of cases in alternative measures in reporting provinces and territories, 1998-99. (CCJS, 2001a)

- Aboriginal youth accounted for 48 per cent of alternative measures cases in Saskatchewaan, 1998-99. (CCJS, 2001a)

- Aboriginal youth are more likely to be remanded in custody (26 per cent of total, but 7 per cent of youth in reporting jurisdictions). (CCJS, 2001a)

In their report on *Urban Aboriginal Youth: An Action Plan for Change* on behalf of the Standing Senate Committee on Aboriginal Peoples, Chalifoux & Johnson (2003) aim to reframe current debate, renew relations between government and First Nations and Metis peoples, and promote proactive and preventative measures. The report refuses to be confined by "problems" that reinforce negative stereotypes and inflict real harm on self-image and success, but focus attention on the human potential, contributions, and "unshakeable resilience" of Aboriginal youth:

> **Far too often the lives of these young people become just another negative statistic. We must resist the temptation to read these figures idly and search ourselves for a deeper understanding of the real suffering and pain that exists behind these numbers. These youth may well be our doctors, poets, artists, leaders, and educators. . . . Minus their potential, we are diminished.**

Designed to nurture and support aspirations and capacities of youth by challenging current limitations on federal responsibility to First Nations off-reserve and other status-based constraints impacting on Metis and non-status Indians, the report breaks with the past "crisis intervention model" and survival mode and promotes Aboriginal youth involvement in decision-making. In its comprehensive recommendations, it promotes enhanced support for Post-Secondary Student Support Program (PSSSP), an audit of successful youth programs and practices, long-term commitment to Urban Aboriginal Multipurpose Aboriginal Youth Centre (UMAYC), an Urban Aboriginal Youth Sport and Recreation Initiative, promotion of Aboriginal culture and history in mainstream educational institutions, Fetal Alcohol Spectrum Disorders (FASD), sexual health, alcohol and drug abuse, and parenting programs, and labour market training.

And the children involved in the Provincial Youth Delegation, an initiative of the Children's Advocate Office, demanded voice and responsibility. The Delegation has been replaced by two youth coordinators who will facilitate future consultations through youth focus groups examining rights education and issues that are important to youth who are eminently able and committed to "breaking new ground." The children want a say in governance (on the boards and on student advisory bodies) and are eager to share responsibilities for the reconstruction of a quality, accessible, relevant, respectful, supportive education system. In particular, they recommend workplace and problem resolution training, addictions and other counselling services, multicultural and anti-racist programs, Native Studies in the elementary curriculum, and recreational opportunities for all, not only for those that "make the cut."

In a youthful Aboriginal population and aging and decreasing non-Aboriginal population, Boe (2002) sees not challenges but "exceptional opportunities to integrate Aboriginal youth into the labour force" and "help to moderate the high rates of crime and incarceration amongst Aboriginal youth," especially if they increase education and job skills training and if employers are motivated by and take advantage of Employment Equity legislation. The Peacekeepers program in Saskatoon, an important initiative of the Saskatoon City Police Service and the Saskatoon Tribal Council, is one program designed to get beyond labelling "at-risk" youth to nourish potential while making a difference in the lives of individuals and institutions.

5.2 Policing

> **There remains a strategic reason for putting extra attention on overcoming racism within Canadian policing. As the front-end of the criminal justice system, discriminatory discretion in policing shapes everything that follows. If any significant change is to be made in the steady trend to overincarcerate Aboriginal people, something must change in policing itself.** (Harding, 1991; qtd. in McNamara [1992])

To address the needs and concerns of First Nations and Metis peoples, policing reform from the late 1960s and 1970s focused on cross-cultural training, legal education for Aboriginal people and Aboriginal court worker programs, tribal policing and special constable programs. However, such initiatives had less impact than anticipated largely because they failed to address adequately structures of power and privilege that drive discriminatory practices. Indeed, commitment to cross-cultural training was frequently resourced (in time, personnel, and finances) at levels that left the training in danger of entrenching the very ethnocentrism it was designed to counter (Cross-cultural Consulting, 1990). In the case of the special constable program ended in 1990, capacity remained insufficient, roles were never adequately defined, dissatisfaction led to high turnover rates, and positions remained subordinate and largely outside decision-making domains (McNamara, 1992).

The Aboriginal Justice Inquiry of Manitoba has been among strong voices for Aboriginal police forces and community policing as a way of retrieving a model of policing supportive of the communities laws and customs. Designed to redress corruption and inefficiencies plaguing many police forces, community policing aimed to decentralize and reconnect with communities, replace reaction, enforcement, and statistical "success" rates with pro-active prevention and partnerships, and mobilize community resources (Hamilton and Sinclair, 1991).

A Chicago study has showed that community policing, police partnering with the community to problem solve and share responsibility for community peace and safety, has a 45 per cent success rate in reducing crime and a 50 per cent success rate in reducing drug and gang activity. And communities rate police responsiveness highly, the public's fear of crime decreasing by as much as 50 per cent (SJSCPS, 2003).

And community policing has been at the heart of debates in Saskatchewan and proved especially divisive in Saskatoon during 2003 municipal elections. Debates have been sustained by the ongoing Commission of Inquiry into Matters Relating to the Death of Neil Stonechild (under the Honourable Mr. Justice D. H.

Wright)—its ongoing litany of disturbing failures of communication, incompetence, indifference, and neglect—and by the civil suit (brought by Richard Klassen and eleven plaintiffs) in which a police officer (as well as crown prosecutor and child therapist) were found responsible for malicious prosecution.

In the face of such documented abuses by police personnel responsible for enforcement and punishment, recent debate in Saskatoon has continued to focus on a need for more police personnel with little regard to questions about conduct, responsibilities, and the efficacy of simply adding to numbers. Meanwhile, resistance to community policing persists despite the proven success and cost-effectiveness of local projects involving community ownership of problems.

One example of a cost-effective community policing intervention in Saskatoon aimed to reduce crime in McNab Park by translating community support into meaningful activity for children in an area where crime was rampant, poverty was widespread, and nobody seemed to care. If people did care, they had no resources to combat crime. In an area with no community facilities (school or recreational centre) but empty rental space aplenty, the facilitation of the Saskatoon Police Service and money from the Travelodge Hotel, SGI Canada, Cogema Resources, Bazaar Novelty, and input from the Saskatoon Rotary Club North, the city's leisure services department, Forest Grove Community Church, and Saskatoon Airport Authority allowed the community to rent half a duplex for a community centre run by a community committee who understood the needs and potential of their community members. With "financial, material and moral" support from the community at large, "what was a next-to-hopeless situation has been turned completely around" (Lockwood, 2003). In the two years of operation of McNab Park Youth Project, there have been these benefits:

- 78 per cent decrease in crime (from 270 offences in 2000-01 to 60 in 2002-03).
- a recreation centre complete with basketball court and hockey rink and a playground.
- cubs, scouts, summer and after-school programming.
- free clothing depot, computer and cooking classes, free kids nights with movies.
- bowling and field trips.

"Community policing is not rocket science," says Constable Larry Lockwood. Nor is it about being "soft on crime." It's about giving people the opportunity to participate, take ownership, and address root causes of crime problems so as to effect positive change. In a place where it would be easy to point fingers and blame the police, the courts, welfare, parents, or the kids, community policing was a "first step" in getting involved. And it all started with frustration leading not to futility and failure but to engagement, imagination, creativity, and action (Lockwood, 2003).

An initiative of the Saskatoon Police Service (SPS) and the Saskatoon Tribal Council, the Peacekeepers Program is another success story, one that grew from a grassroots collaborative approach to at-risk youth. Critical to the development of the program was the community partnership among SPS, Saskatoon Tribal Council, Metis Nation of Saskatchewan, and the Federation of Saskatchewan Indian Nations to create the position of the Aboriginal Liaison Officer (Craig Nyirfa since 1994), and define the officer's roles and responsibilities to cultivate good relations and put Aboriginal culture at the heart of decision-making and activities. Officer Nyirfa and Constable Keith Salzl have been working together on the Peacekeepers program since 2001.

Peacekeepers is a story about people and community partnerships, about building relationships and trust, about preventing and reducing crime, while building capacity by mentoring those who might become police officers. It is about making a difference not only in the lives of individual participants but in the organizations they represent. It is also a model for not only respecting First Nations culture but internalizing it within organizations, putting it to work in policies, processes, and practices so that it changes them at their roots. Peacekeepers is about thinking outside the colonial box! In other words, Peacekeepers goes beyond the label (at-risk) to see the opportunities and human potential—and it nourishes them!

Typical youth participants share some or all of these experiences:

- Truancy from school.
- Involvement in crime.
- Severely dysfunctional homes.
- Family history of crime and abuse.
- Only contact with police in negative situations.
- Disrespect for and fear of police.
- Stereotypes of police as "the enemy."

Building on shared cultural and physical activities, Peacekeepers proves mutually educative for youth and adult participants, those who are First Nations and those who are not. First Nations values and principles are foundational to a program that is not paternalist, but understands all participants can learn from one another. Learning from respected Elders and through sweat lodges, talking circles, and the medicine wheel, youth begin to find balance in their lives as they take pride in their identities and learn the value of First Nations people, traditions, and heritage to the broader community.

Activities challenge the youth, but also give opportunities to excel in areas where they can teach adults a thing or two. While one type of program involves regular activities that are inexpensive and readily organized, the second set of activities requiring significant planning and resources offers intense pro-active cultural awareness programs designed to benefit youth and police: canoe trips, bike excursions, wilderness hikes, ski trips, winter survival trips, basketball tournaments, firewood trips, rock climbing, and sweat lodge ceremonies.

At all times, they are working together on teams, building leadership skills, and learning to trust and rely on one another. And that involves overcoming the barriers of preconceptions, stereotypes, and prejudice, including racism. They learn too from those who have walked similar paths and redirected their lives; successful participants can in turn become role models or youth leaders and participate in the SPS Mentoring Program and other related activities or pursue other career options.

Peacekeepers knows the power of the media too. It is not enough to produce or be success stories—to do wonders with a modest budget of about $50,000 per year—if people don't know, so partnership with *Eagle Feather News*, for instance, gives experience of interviews and opportunities to write about and/or photograph activities.

In a recent 2003 Canadian Centre for Justice Statistics report, *Police Resources in Canada*, Shankarraman (2003) profiles 2002 data concerning policing in Canada: a responsibility of federal, provincial, and municipal levels of government. According to Shankarraman (2003), "Policing expenditures totalled $7.8 billion in 2002… [representing] an increase of 7 per cent from [a current dollar figure of almost $7.3 billion] 2001." Of the total 2002 amount, salaries, wages and benefits accounted for about 80 per cent of policing expenditures. On 15 June 2003, there were 59,494 police officers in Canada, up 1.8 per cent from the 58,422 employed over 2002.

Expenditures on policing by province/territory and RCMP administration (and other costs such as the training academy) are identified in the following figure.

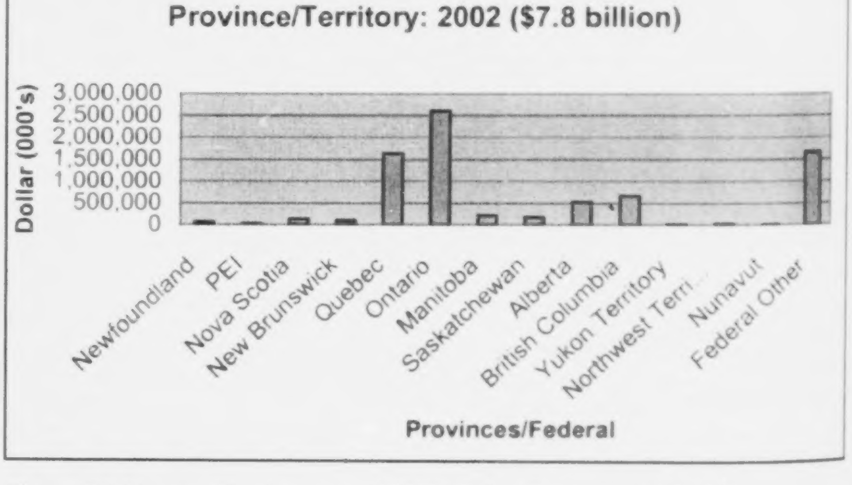


Figure 28-Source: Shankarraman (2003). *Police Resources in Canada*.

According to the Shankarraman (2003) figures, the provinces spent the following amounts on policing in 2002:

Newfoundland	$66,246,000
PEI	$17,067,000
Nova Scotia	$130,545,000
New Brunswick	$104,538,000
Quebec	$1,616,832,000
Ontario	$2,596,184,000
Manitoba	$211,757,000
Saskatchewan	$175,468,000
Alberta	$530,307,000
British Columbia	$654,990,000
Yukon Territory	$10,513,000
Northwest Territories	$19,333,000
Nunavut	$16,207,000
Federal Other	$1,664,423,000
Canada Total	**$7,814,410,000**

According to Shankarraman (2003), Canada ranked 24th in the world with a rate of 182 police per 100,000 population, the same as Japan and New Zealand, but substantially lower than Italy (559 per 100,000) ranked number 1. The United States ranked 14th with 244 police officers per 100,000 population, and Mexico was ranked 29th with an average of only 5 police per 100,000 population.

Shankarraman (2003) also highlights the fact that Saskatchewan "had the most police per capita among the provinces" with 201 per capita in 2003. This was the third year in a row that Saskatchewan leads the other provinces with the most police officers per capita. This is due, in part, to a shrinking population (which forms the denominator for the per capita calculation), and an expanding RCMP presence in the province. Further, Regina "had the most police officers per 100,000 population (202) in 2003" in a Census Metropolitan Area (CMA). Winnipeg ranked 3rd with 184 per 100,000 population, while Saskatoon ranked 5th with 178 per 100,000 population.

Since 1999, Saskatchewan has increased the annual policing budget by a record $18 million, which has provided 132 more police officers.

Source: Saskatchewan Justice and Saskatchewan Corrections and Public Safety (SJSCPS). (2003). *Working Together for Safer Communities*. Report submitted to The Commission on First Nations and Métis Peoples and Justice Reform.

5.3 Prosecutions

A Brief Overview of Prosecutions in Canada

In the Canadian criminal justice system, Crown prosecutors (also called 'Crown counsel' or 'Crown attorneys') are lawyers authorized to represent the Crown before the courts in relation to the prosecution of offences. Responsibility for these activities is divided between the Attorney General of each province and the Attorney General of Canada.

Charging practices are a provincial responsibility. It is important to note that, within Canada, two very distinct policies exist. In British Columbia, Quebec and New Brunswick, a Crown prosecutor normally must give advice or approval before a charge can be laid by the police. In these provinces, police complete a "Report to Crown Counsel", including details of the case and the results of the investigation. These reports are submitted to the office of the Crown counsel for review or approval of the recommendations to lay charges.

In the remaining provinces and territories, police may lay charges on their own, and prosecutors review the charges by way of a post-charge review. To varying degrees, it is common practice for police to approach a Crown prosecutor for legal advice during the course of an investigation, on the drafting of any information, and on other pre-charge issues.

Source: Snowball, K. (2002a). *Criminal Prosecutions Personnel and Expenditures 2000/01.*

There is not a great deal of statistical information available from Statistics Canada or Corrections Canada, for instance, on the prosecutions sector of justice in Canada, a sector where significant discretion is exercised and where there are marked differences across jurisdictions. And there is even less data on the Aboriginal dimension of that sector. This is especially troubling when prosecutorial decisions combine with Aboriginal people's lack of confidence in the system to impact on participation rates, on much heralded cycles of "crime wave," and on jail time becoming a more likely outcome than completed educations or meaningful employment – and with significant socioeconomic consequences for the whole community (Quigley, 1994).

In one of the only current reports on the subject, Snowball (2002a) reports that in 2000/01, national spending on criminal prosecutions totalled $335.4 million, an increase of $70.8 million over the $264.6 total recorded in 1996/97 (an 18 per cent increase taking into account inflation). Over 80 per cent of the costs went to the payment of the salaries and benefits of the 3,609 full-time (equivalent) people employed in the sector, 60 per cent of whom were staff lawyers.

Snowball (2002a) also explores the relationship between crime rates and youth and adult criminal court caseload data and potential prosecution caseloads across the country. For example, Saskatchewan experienced the highest crime rate in Canada in 2000/01 with 130,306 criminal code incidents (a rate of 12,750 per 100,000 population). Saskatchewan also experienced the highest rate of criminal court caseload, with 35,032 youth and adult cases (or 34.3 cases per 1,000).

5.4 Courts

> **The fundamental issue is the identity of the decision-maker. The Van der Peet test entrenches European paternalism because the courts of the colonizer have assumed the authority to define the nature and meaning of Aboriginal cultures.** (Barsh & Henderson, 1997)

Description of the Court System in Canada

> **Responsibility for Canada's system of courts is divided between the federal and provincial/territorial governments. The Constitution Act, 1867 gives the federal government authority to create a general court of appeal for Canada and to establish any additional courts for the better administration of the laws of Canada. Section 96 of the Act gives the federal government authority to appoint judges to the superior courts in the provinces and territories. Hence these courts have become known as "Section 96 courts." Under this authority, Parliament has established the Supreme Court of Canada, the Federal Court of Canada, and the Tax Court of Canada. Section 96 courts salaries and benefits as well as some other operational costs are paid by the Office of the Commissioner for Federal Judicial Affairs (OCFJA) and the Treasury Board.**
>
> **Canadian courts are organized in a four-tiered structure consisting of federally established courts operating at the national level, and federally and provincially established courts operating at the provincial and territorial levels. The Supreme Court of Canada holds the highest position in the Canadian court structure. Below the Supreme Court are the Tax Court and the Federal Court. All three courts have national authority and are the administrative responsibility of the federal government.**
>
> **The Courts of Appeal, the highest courts in the provinces and territories, make up the second level. These courts are "Section 96 courts," provincially administered but presided over by federally appointed judges. The third level consists of provincial/territorial superior courts, which are also Section 96 courts. Finally, the fourth level is made up of the provincial and territorial courts. At this level, both court**

administration and the appointment of judges are the exclusive responsibility of the provincial and territorial governments.

Source: Snowball (2002b). *Courts Personnel and Expenditures 2000/01*. Canadian Centre for Justice Statistics.

The following table shows court expenditures by type and jurisdiction. Other expenditures includes law library fees, witness fees, and other operational costs. Of the total Canadian court expenditures of just over one billion dollars, approximately 80 per cent went to salaries and benefits. Snowball (2002b) highlights the fact that, after taking inflation into account, court expenditures rose by about four per cent from the 1998-99 totals. Almost 12,000 people worked in the court system in Canada: 9,890 (83 per cent) were employed as court staff and 2,011 (17 per cent) were judges.

Table 3: Court Expenditures ($'000) by Type and Jurisdiction, 2000/01

Jurisdiction	Personnel	Sub-Total Salaries & Benefits	Sub-Total Other Expenditures	Total Expenditures
Newfoundland & Labrador	202	13,070	1,781	14,852
P.E.I.	53	3,537	553	4,090
Nova Scotia	594	33,062	7,092	40,154
New Brunswick	292	17,668	4,596	22,263
Quebec	2,262	142,580	22,407	164,987
Ontario	3,380	256,304	75,503	331,807
Manitoba	589	36,809	7,643	44,452
Saskatchewan	398	31,302	9,259	40,561
Alberta	1,316	98,904	25,500	124,404
British Columbia	1,861	126,845	20,981	147,826
Yukon	45	3,528	1,535	5,063
NWT	58	4,901	2,808	7,709
Nunavut	21	1,587	193	1,779
Supreme Court	161	11,880	6,278	18,159
Federal Court	475	32,353	12,958	5,311
Tax Court	147	11,401	6,313	17,714
OCFJA	48	3,672	4,142	7,814
Canada	**11,901**	**829,404**	**209,542**	**1,038,946**

Source: Snowball (2002b). *Courts Personnel and Expenditures 2000/01*. Canadian Centre for Justice Statistics.

Information is collected for both youth and adult court statistics. In her analysis of youth court statistics in Canada, Thomas (2003) found that youth court cases totalled 85,640 for 2001-02, a decrease of two per cent from the previous year, and a 16 per cent drop from 1992-93. Over the 10-year period (1992-93 to 2001-02), crimes against property cases decreased by 41 per cent, while drug-related cases increased by 215 per cent. In 2001-02, youth in the age-range of 16 to 17 years of age accounted for the majority of youth in court, at 54 per cent. Sixty-

one per cent of youth court cases concluded with a finding of guilt, with probation comprising the most serious sentence (at 54 per cent), while custody was ordered 28 per cent of the time. In 2001/02, the median sentence length for probation, secure custody and open custody was 360 days, 30 days, and 36 days respectively.

From the *Young Offenders Act (1984)* to the *Youth Criminal Justice Act (2003)*

Providing effective treatment and rehabilitation of young offenders, and ensuring community safety are primary objectives of the youth justice system. The *Young Offenders Act (YOA)*, proclaimed in 1984, introduced rights for adolescents previously guaranteed to adults only. It recognized the special needs that youth have as a result of their varying levels of maturity, the necessity for youth to accept responsibility for unlawful action and the right of society to protection from illegal behaviour. Seventeen years of experience later, new legislation was introduced to reform Canada's youth justice system and provide clearer legislative direction on youth crime. Having received Royal Assent in February, 2002, the *Youth Criminal Justice Act (YCJA)* replaced the *Young Offenders Act* on April 1, 2003.

Source: Thomas (2003). *Youth Court Statistics, 2001/02*. Canadian Centre for Justice Statistics.

In his report on adult criminal court statistics for 2001-02, Robinson (2003) reveals that adult criminal courts in ten provinces and territories processed 452,450 cases involving 992,567 charges. In 2001/02, the three most frequently occurring offences were impaired driving (12 per cent of all cases), common assault (11 per cent) and theft (9 per cent). In 2001/02 males and younger adults are over represented in adult courts across Canada, with 83 per cent of all cases at the adult criminal court level involving a male accused, and 15 per cent of involving a female accused. In the other two per cent, the gender of the accused was not recorded, or the accused was a company.

Robinson (2003) also determined that while 18 to 24 year olds comprised 12 per cent of the adult population in 2001/02, they accounted for 31 per cent of all cases in adult criminal court. Further, offenders under 45 years of age accounted for 85 per cent of the total cases heard in adult criminal court, while composing only 53 per cent of the adult population in Canada. In contrast, persons 55 or older represented 28 per cent of the adult population but accounted for less than 5 per cent of the adults involved in criminal court cases.

These and other reports present a plethora of statistical information on the courts, court cases, youth and adult participation rates across the country, and other data (such as type of case, probability of conviction, possible outcomes facing adult and youth offenders upon conviction, and length and cost of court proceedings). The court statistics do not, however, clearly define the experience young and adult Aboriginal peoples face when they find themselves in court. Neither do the statistics portray the persistent barriers Aboriginal peoples come face-to-face with in the courtroom due to the unique thought and decision-making processes of the judiciary.

In a series of landmark decisions in the 1990s, the Supreme Court of Canada has shown its determination to disavow colonial thinking, change its evidentiary standards, try to meet its obligations to be "sensitive to the Aboriginal perspective," and be flexible in its "generous, liberal interpretation" of constitutional provisions and affirmation of Aboriginal rights (*R. v. Sparrow* [1990]). It has done so by taking a more contextual approach and attending to the exceptional circumstances of Aboriginal offenders. *R.* v. *Van der Peet* [1996], for instance, is clear on the damage done to Aboriginal rights by the "liberal enlightenment" thinking on which Canadian courts continue to rely (at paras. 18 and 19). In *R v. Gladue* [1999], the Court is clear that, though Canada is "a world leader in many fields, particularly in the areas of progressive social policy and human rights," it is also "distinguished as being a world leader in putting people in prison," incarcerating 130 per 100,000, while the United States leads with the highest rates in the world at 600 per 100,000 (at para. 52).

The Court argues, "in light of the tragic history of the treatment of Aboriginal peoples within the Canadian criminal justice system," the Court has "a judicial duty" to give "real force" (*R v. Gladue* [1999] at para. 34) to section 718.2(e) of the Criminal Code: "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders." The Court recognizes this "judicial duty" requires altering "the method of analysis" (at para. 33) in the face of enormous and growing disproportion of Aboriginal people in the corrections system and "evidence that this widespread racism [in Canada] has translated into systemic discrimination in the criminal justice system" (*R. v. Williams* [1998] cit. at para 61). Anticipating those who argue for absolute equality before the law, the Court is clear: "The fact that a court is called upon to take into consideration the unique circumstances surrounding these different parties is not unfair to non-Aboriginal people. Rather, the fundamental purpose of s.718.2(e) is to treat Aboriginal offenders fairly by taking into account their difference" (*R v. Gladue* at para. 87).

Though the Court recognizes that "sentencing innovation" (at para. 65) cannot alone remedy injustices against Aboriginal peoples in Canada, it acknowledges its responsibility to be part of the solution. Yet, as the case of Jamie Gladue herself suggests, the Court is not always able to rethink entrenched misconstructions about Aboriginal difference, relevant "circumstances" and "Aboriginal heritage". In its thinking, the Court remains overly positivist in its understanding of the meaning of a life, identity, intentions, and circumstances to account for Aboriginal difference. The Court presumes to know an overly singular "Aboriginal perspective" and an "Aboriginal heritage" associated with a "network of support and interaction" and dissociated from a history of colonial violence. Constrained by inherited categories, the Court cannot see or act on a full range of socio-cultural connections and causalities.

Only when the Court acts more fully on its own initiatives, when it revalues the treaties, Aboriginal knowledge and heritage, the authority of the Elders as much as court and cultural workers, and makes a "long-term commitment to share the definitional power" (Monture-Angus, 1999) will courts do their part in stopping the misrepresentation that results in the tragic over-representation of Aboriginal peoples in the prison population. Only when the courts rethink commitments to "neutral" categories, over-investments in stare decisis governing notions of proportionality in sentencing will the courts end the over-representation. Only then will the healing properties of the Aboriginal circle be recognized and restored (Findlay, 2001; Findlay, 2003).

5.5 Legal Aid

> **Access to Justice in Canada is a concern for governments and policy-makers, legal professionals, and the public. One aspect of accessibility is access to legal services. Not all Canadians have the resources to pay for a lawyer. Legal aid plans have been established in all provinces and territories, with the common goal of assisting low-income Canadians who require professional legal counsel.** (Tufts & Sudworth, 2003)

Designed to address issues of access to legal services for low-income Canadians, Legal Aid is funded by cost-sharing agreements with the federal government and administered by the provinces and territories, each with its own financial eligibility requirements and operational plan. With total national expenditures increasing by 16 per cent to $593 million (19 per cent on administrative and other costs) and federal contributions increasing by 12 per cent to $92 million (or $3 per Canadian) in 2001-02, Legal Aid approved 510,818 of 838,561 applications, 55 per cent for civil and 45 per cent for criminal matters.

Between 1994-95 and 1998-99, federal funding decreased steadily from $88 million to $82 million before the one-time 2001-02 agreement to address financial stress with the largest contribution in ten years. Meantime, client contributions and cost recoveries amounted to $21 million in 2001-02, an increase of 31 per cent, though as a proportion of total costs, these contributions remain fairly consistent with variations among jurisdictions (high of 9 per cent in Manitoba and low of 1 per cent in Quebec in 2001-02). In almost every jurisdiction in Canada, applicants must provide an assessment of their financial situation and need. The overall trend over the last ten years has seen a reduction in applications and in approvals (from a high of 1.2 million applications in 1992-93 to a low if 801,904 in 1997-98) attributed to these factors: "pre-screening procedures, changes in legal aid coverage, stricter eligibility requirements, and an increased use of duty counsel or *pro bono* services (services without charge) provided by private lawyers" (Tufts & Sudworth, 2003).

In most jurisdictions, criminal legal aid covers indictable offences and summary offences where imprisonment is likely, while civil legal aid covers family matters (Saskatchewan, New Brunswick and Yukon Territory) and, in some jurisdictions, extends to landlord-tenant disputes, property, social assistance, consumer protection, and even refugee and Mental Health Act matters. Personnel increased by 2 per cent to 3,001, 36 per cent of whom are lawyers, and services may extend to research, advocacy, and education programs. Saskatchewan operates on a staff system where lawyers are employed to provide legal aid services, though the private bar may be enlisted when circumstances warrant. Ontario and Alberta operate primarily judicare systems involving private lawyers billing for services, while other jurisdictions operate with a mixed system, combining both staff and judicare (Tufts & Sudworth, 2003).

Legal Aid Delivery Systems in Canada

Canada provides legal aid through separate legal aid plans in each of the provinces and territories. Though each provincial/territorial government has developed its own personalized legal aid scheme, three general models have been adopted to deliver legal aid services: judicare, staff and mixed.

***Judicare*, a fee-for-service system, uses private lawyers who bill the legal aid plan for their services. The client may retain any lawyer who is willing to accept the case. Ontario and Alberta are the only provinces that operate judicare systems.**

***A staff system* directly employs lawyers to provide legal aid services. Newfoundland and Labrador, Prince Edward Island, Nova Scotia and Saskatchewan have adopted this approach. Even in staff systems, the private bar is used when circumstances warrant, such as conflict of interest, or unavailability of a staff lawyer.**

A combination of the judicare and staff systems, a mixed system utilizes both private and staff lawyers in the provision of legal services. The remaining jurisdictions (New Brunswick, Quebec, Manitoba, British Columbia, Yukon Territory, Northwest Territories, and Nunavut) operate mixed systems of legal aid. In most of these jurisdictions the client has the right to choose counsel, either staff or private, from a 'panel' of lawyers providing legal aid services.

Source: Tufts & Sudworth. (2003). *Legal Aid in Canada: Resource and Caseload Statistics 2001/02*. Canadian Centre for Justice Statistics.

Though the Legal Aid Survey does not identify who is applying for legal aid, the Saskatchewan Legal Aid Commission does supply some demographic information in its annual report for 2001-2002: 81 per cent on social assistance, 71 per cent of Aboriginal descent, 65 per cent male, and 35 per cent female (Tufts & Sudworth, 2003). But the statistics don't tell the whole story. If the colonial history of Aboriginal peoples has served as a barrier in the past, geography aggravates issues of access in the present.

In the north Legal Aid lawyers often have too little time in communities, accused peoples have limited access, and interviews are often conducted in less than ideal settings. Even the complaints process if people feel aggrieved at their treatment represents significant barriers: the *Legal Aid Act* stipulates complainants may appeal within 20 days of the decision to the Chief Executive Officer whose decision is final unless it is a matter of financial eligibility involving a civil matter, where the decision may be appealed to the Civil Appeal Committee.

Although the *Youth Criminal Justice Act* (YCJA) promotes community-based rather than court-based alternatives for youth accused of less serious offences, youth can apply for legal aid. However, youth are disinclined to make full use of the legal aid option.

In Saskatchewan $11,904,000 was spent on legal aid services: $7,444,000 (63 per cent) on criminal matters, and $3,581,000 (30 per cent) on civil matters. In Saskatchewan, civil matters include family matters only. The remaining $879,000 (7 per cent) was spent on central administrative and other expenses. Legal aid spending in Saskatchewan increased steadily during the period of 1997-98 to 2001/02 (see figure).

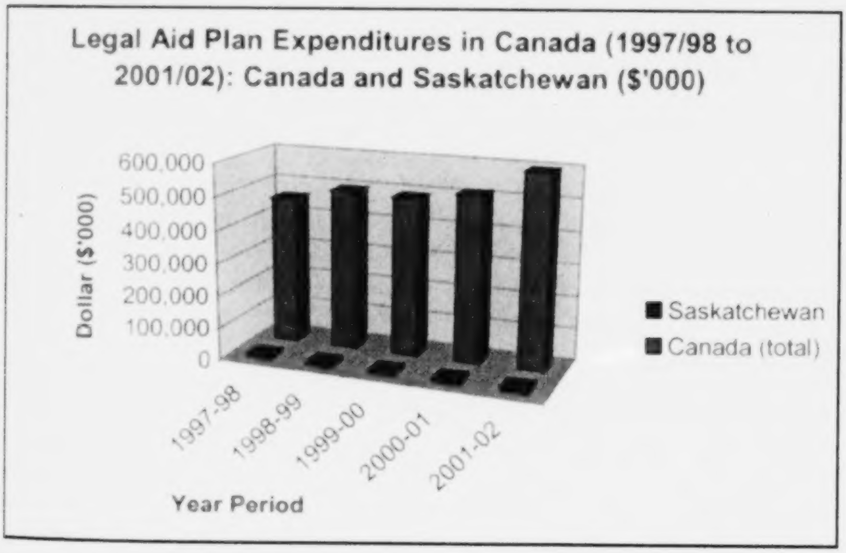


Figure 29-Source: Tufts & Sudworth. (2003). *Legal Aid in Canada: Resource and Caseload Statistics 2001/02*. Canadian Centre for Justice Statistics.

Tufts & Sudworth (2003) find the dollar amounts related to the growth of spending on legal aid in Canada and Saskatchewan respectively are: 1997-98 ($454,643,000 and $9,560,000); 1998-99 ($494,409,000 and $10,111,000); 1999-00 ($487,106,000 and $10,616,000); 2000-01 ($512,107,000 and $10,989,000); and 2001-02 ($593,117,000 and $11,904,000).

There is not a great deal of statistical information generally available regarding the Aboriginal participation rate in and experience with the various legal aid plans offered across Canada.

5.6 Corrections

> **They [mandatory sentences] have not stemmed the drug trade. They only thing they have done is to fill the prisons.** (Retired Republican New York State Senator John Dunne)
>
> **While America has about 5 per cent of the world's population, almost one in four persons incarcerated worldwide are incarcerated in the US.**
>
> **No functioning democracy has ever governed itself with as large a percentage of its adults incarcerated as the United States.** (Human Rights Watch)
>
> **—Beatty, Holman & Schiraldi (2000)**

U.S. trends in incarceration over the last two decades present some salutary lessons for decision-makers in Canada. Severely punitive sentencing policy as well as prohibitions on parole in some jurisdictions during that period has increased incarceration numbers to 2.1 million in 2003—quadruple the number in 1980 despite crime rates that have fallen or levelled off since the early 1990s (Butterworth, 2003). Some of the results of the nineties, "the most punishing decade" in U.S. history, include:

- 816,965 additional inmates (compared with 462,006 from 1910 to 1980).
- cost of $40 billion for prisons and jails in 2000 alone.
- $24 billion for non-violent offenders in 2000; $9.4 million for non-violent drug offenders.
- 458,131 inmates for drug offenses (European Union with 100 million more citizens than US 356,626 *for all offenses*).
- rise in youth admitted to state prisons for drug offenses from 31 per 100,000 (1986) to 122 per 100,00 in 1996.
- five times as many whites using drugs as African Americans.

- young, African American men admitted to state facilities for drug offenses at rate 13.4 times the rate of white youth.

- 13 per cent of African American men losing right to vote as a result of involvement in criminal justice system.

- prison budgets in mid-nineties California and New York exceeding the budget for higher education. (Beatty, Holman, & Schiraldi, 2000)

These US trends disproportionately affecting youth and African Americans created a prison building boom as well as financial crises for state legislatures. And a Center for Disease Control Study found not decreases but increases in drug use among high school children in the 1990s, including a doubling of cocaine use, while a 1997 RAND corporation study found spending on drug treatment was four times more effective in reducing drug consumption than the same amount on law enforcement, seven times more effective than longer sentences, and fifteen times more effective than mandatory sentences (Beatty, Holman, & Schiraldi, 2000).

Similarly, New Jersey's mandatory imprisonment for drug offenses produced:

- the highest drug prison admission rates in the US.

- yet higher proportions of drug offenders.

- racially discriminatory incarceration practices.

- increasing proportions of female drug prisoners.

- drug incarceration costs exceeding one third of state's spending on entire corrections system. (Schiraldi & Ziedenberg, 2003)

Meanwhile, in Alabama, extreme fiscal retrenchment has left the prison system looking like "a third world country," according to Rosa Davis, chief assistant attorney general of the state (qtd. in Butterworth, 2003).

In addition to spending $10 billion a year imprisoning drug offenders and billions more on the so-called "War on Drugs," the U.S. is only now coming to terms with the broader impact of such incarceration statistics on the socio-economic life of communities, states, and country and the benefits to all of treatment, parenting, and educational programs that return employable parents to society (Schiraldi & Ziedenberg, 2003).

The result of soaring costs without commensurate benefits to recidivism or reductions in drug use, for instance, has been a significant change in policy orientation from a very costly determination to be "tough on crime" to a commitment to the new mantra celebrating efforts to be "smart on crime." Such rethinking has brought together those who oppose long sentences on principle and those who simply find them too expensive (Butterworth, 2003).

In 2003 approximately 25 states have passed legislation covering some or all of these initiatives:

- reducing or eliminating mandatory minimum sentences.
- restoring early release for parole.
- eliminating parole supervision for low-risk offenders.
- offering treatment and work-release programs for drug offenders.
- mandating treatment instead of incarceration for first-time drug offenders (non-violent).

Savings in New York alone could reach $21 million yearly if an estimated 1,185 inmates are released early on new certificates for good behaviour, while the advocacy group Families Against Mandatory Minimums claims savings of $41 million in 2003 for Michigan as a result of repealing its mandatory minimum drug sentences. Kansas anticipates diverting 1,400 (or 15.55 per cent of total) offenders to treatment, while Washington projects savings of $45 million per year (Butterworth, 2003).

5.6.1 Adult Offenders

> **A place like this [Kingston Prison for Women] breeds a new kind of woman.. . . They literally age before you. . . . I have no mirror hanging in my cell, because prison time lies so heavy on the mind and spirit I can see my age in the face of everyone around me. Women age faster in prison than men.** (Yvonne Johnson; Wiebe & Johnson, 1998)

While the median age of Canadians in 1996 was 41 years of age, the median age of adult offenders was 32, and 29 for Aboriginal offenders. Aboriginal men (20-24) accounted for 22 per cent of provincial/territorial inmates, though they represent only 9 per cent of the population. They come disproportionately from inner-city neighbourhoods of Prairie cities (Boe, 2002). In addition to the 18 per cent Aboriginal offenders in federal custody, another 12 per cent of those on conditional release are Aboriginal. In the Prairie region, 41 per cent of the federally-incarcerated are Aboriginal as well as 32 per cent serving time in the community. Though these offenders are overwhelmingly male, single (about 50 per cent), and young (69 per cent of Aboriginal males are less than 35 as opposed to 55 per cent non-Aboriginal), 4 per cent are Aboriginal women double the percentage for non-Aboriginal women. Twenty-six per cent of Aboriginal offenders (18 per cent non-Aboriginal) have less than grade 8 education, while 75 per cent are unemployed at admission as opposed to 66 per cent of non-Aboriginal (Trevethan, Moore, & Rastin, 2002). Significantly too, female offenders are now more likely to be involved in violent offences (often associated with drug and alcohol use) and in Saskatchewan female offenders face higher average sentence lengths than in other jurisdictions (SJSCPS, 2003).

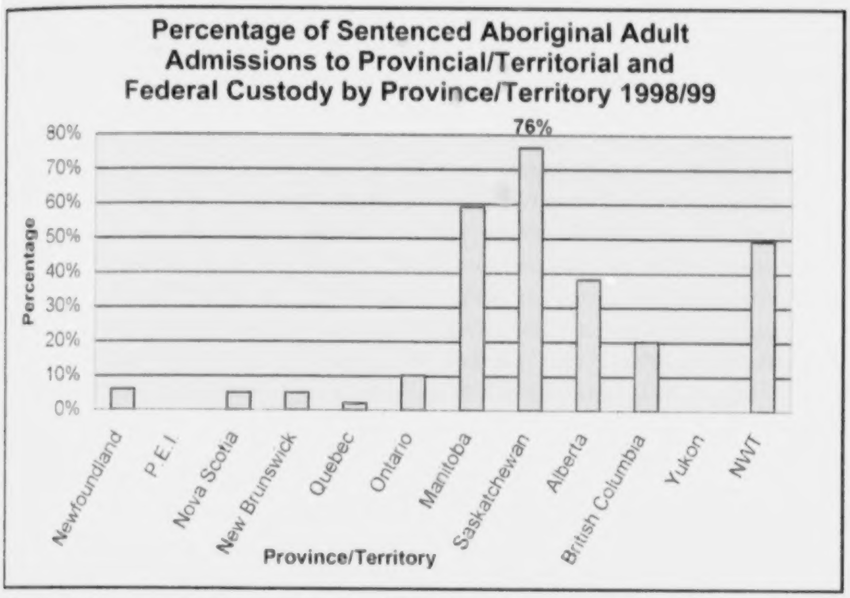


Figure 30-Source: Statistics Canada (2000b). Adult Correctional Services 1998/99

The Total Number of Sentenced Admissions to Provincial/ Territorial and Federal Custody in Canada in 1998/99 was 93,045. **Saskatchewan had 3,850 sentenced admissions to provincial/territorial and federal custody (6th largest of provinces/territories). The three largest, from 1st to 3rd, were Ontario (32,815), Quebec (21,735), and Alberta (15,491).**

The Total Number of Aboriginal Sentenced Admissions to Provincial/Territorial and Federal Custody in Canada in 1998/99 was 13,389. **Saskatchewan ranked third after Ontario and Alberta in actual numbers of Aboriginal sentenced admissions: Alberta had 5,887 Aboriginal sentenced admissions (of 15,491), Ontario had 3,281 (of 32,815) and Saskatchewan had 2,926 (of 3,850).**

Source: Statistics Canada (2000b). Adult Correctional Services 1998/99

A history of "not so benign neglect and paternalism" (Jackson, 1988a) has characterized the treatment of First Nations and Metis women once they enter Canada's prisons, which they continue to do disproportionately. While 3 per cent of the population is Aboriginal women, 21.1 per cent of women incarcerated in federal institutions are Aboriginal. Of the 53 penitentiaries under the Correctional Service of Canada, five are regional women's institutions and one a women's healing lodge (Okimaw Ohci Healing Lodge). Women have been moved around in the prison population for men's convenience and removed from family and other supports disproportionately. Currently, there are 31 women from

Saskatchewan in the Edmonton Institution for Women, for instance (Krause, 2003). Between 1968 and 1988—without immediate effect—no fewer than 13 government studies recommended the closure of the federal prison for women (Jackson, 1988a).

And most of the programming has been based on research on men with the effect, for instance, of disproportionately classifying women as dangerous. And Aboriginal women tend to higher security classifications than non-Aboriginal, according to Verbrugge & Blanchette (2000): minimum 29 per cent (versus 55 per cent); medium 60 per cent (versus 42 per cent); and maximum 10 per cent (versus 3 per cent). This tendency is exacerbated when mental health disabilities are associated with risk—and mental and physical disabilities are factors in determining security classification in s. 17 of the regulations (Canadian Assoc. of Elizabeth Fry Societies, 1998-99), although programs are now being designed especially for women (mother-child residential and survivors of abuse and trauma programs, for instance). If in the case of men, numbers were too many to make government action feasible, in the case of women their few numbers in prison became not the reason to act but the excuse for inaction (Jackson, 1988a).

> **In prison most women understand my story; it's so much their own.** (Yvonne Johnson)

Yvonne Johnson has spoken eloquently about the differential effects of incarceration for men and women—and the bonds between women. While men pump iron and maintain their dreams and indeed expectations of retaining their women or finding a new one, persistent double standards deny such possibilities for women:

> **If a woman has borne children, they'll have been adopted away into foster homes; if she screws around like men do she's just a whore, and worse than any because she has done heavy time. A woman on parole can't run wild like a man because her children will suffer. Men generally don't care about their kids. . . . Who cares—some woman, somewhere, is taking care of them.**

And the women in prison share Johnson's own experience of abuse—90 per cent of Aboriginal women in federal prisons report a history of physical abuse and 61 per cent a history of sexual abuse (Elizabeth Fry, 1993). Yvonne finds, "In prison most women understand my story; it's so much their own." And each copes with the past and dangers in the present in her own way. Yvonne aims not to think about her children and the reality that they too may be suffering abuse—"to keep insanity at bay she has to shut down. She's isolated, no lover, no motherhood. She ages fast into something dry; hard; shrivelled" (Wiebe & Johnson, 1998).

The statistics related to adult corrections cannot take these and other stories into account. But an understanding of the cost of adult corrections and the make-up of adult offenders can shed light on the general trends in corrections in Canada, including a specific picture of the over-representation of Aboriginal adults in federal institutions and programs.

Correctional Facilities Across Canada

In 2001/02, there were 198 correctional facilities across Canada. Slightly more than one third of these, or 68, were under federal jurisdiction: 16 facilities were federal community correctional centres with a capacity of 482 spaces, and 52 were federal institutions with 13,682 spaces. Federal facilities provided 40 per cent of the total institutional capacity in Canada and capacity has increased by 10 per cent since 1995/96. A total operational capacity of 21,090 spaces was reported in 130 provincial and territorial facilities. Seventy-nine per cent (103) of these facilities were secure and the remainder (27) were open (minimum security). Since 1999/00, the capacity of correctional facilities—federal, provincial and territorial—has increased by 5 per cent.

Source: Carrière, D. (2003). Adult Correctional Services in Canada, 2001/02. Canadian Centre for Justice Statistics.

Carrière (2003) stresses that on an average day in 2001/02 "approximately 155,000 adults were either in custody or under supervision in the community in Canada. The adult correctional population in custody numbered slightly over 32,000 (21 per cent) while just under 123,000 offenders (79 per cent) were supervised in the community." The total incarceration rate for Canada was 133 inmates per 100,000 people in the adult population in 2001/02. The cost of adult corrections in Canada in 2001/02 was over $26 billion, including federal (at 55 per cent) and provincial (at 45 per cent) correctional systems. In 2001/02, women constituted 9 per cent of provincial and territorial admissions, 5 per cent of federal admissions, and 17 per cent of probationers: proportions that have not changed much over the last several years.

An earlier report written by Finn, Trevethan, Carrière & Kowalski (1999) found that Aboriginal inmates differed from non-Aboriginal in the following ways:

- were incarcerated for assault offences more often than non-Aboriginal inmates
- were younger on average, had less education, and were more likely to be unemployed than non-Aboriginal inmates
- were considered higher risk to re-offend and had higher needs than non-Aboriginal inmates.

5.6.2 Youth Offenders

We incarcerate youth at a rate four times that of adults and twice that of many U.S. states. We incarcerate youth despite the fact that we knowingly run the risk that they will come out more hardened criminals and we incarcerate them

> **knowing that alternatives to custody can do a better job of ensuring that youth learn from their mistakes.** (Then Justice Minister Anne McLellan; qtd. in Green & Healy, 2003)

Marinelli (2002) begins her report on *Youth Custody and Community Services in Canada, 2000/01* by challenging the presumption that deterrence is best achieved by punishment:

> **Incarceration of youth has been accepted as one method of deterring youth from criminal behaviour. However, it has been argued that the "get tough" approach and its focus on punitive measures does not provide youth with effective treatment and rehabilitation that are needed to successfully reintegrate them back into the community.** (Varma & Marinos, 2000; Bala, 1997; Baron & Hartnagel, 1996; cit. Marinelli, 2002)

Marinelli (2002) establishes that in 2000-2001 there were 14,909 admissions to sentenced custody in Canada, a decrease of 6 per cent from the 15,729 admissions recorded ten years earlier in 1999-2000. Aside from sentenced custody, youth correctional services admissions for 1999-2000 and 2000-2001 also include remand (9,933 in 1999-2000 and 9362 in 2000-2001) and probation (35,681 in 1999-2000 & 36,509 in 2000-2001). She goes on to report that, of the 14,909 admissions in 2000-2001 to sentenced custody, 6,958 youth went to secure custody, while the other 7,951 youth went to open custody.

Definitions Related to Youth Offenders in Canada

Custody: **A status that requires the young offender to spend time in a designated correctional facility, either in secure custody, open custody or remand as ordered by the youth court.**

Open custody: **The Young Offenders Act defines open custody as "custody in (a) a community residential centre, group home, childcare institution, or forest or wilderness camp or (b) any like place or facility". A facility is considered "open" when there is minimal use of security devices or perimeter security. The extent to which facilities are "open" varies across jurisdictions.**

Probation: **A common type of community-based disposition, where the offender is placed under the supervision of a probation officer or other designated person. This includes both supervised and unsupervised probation.**

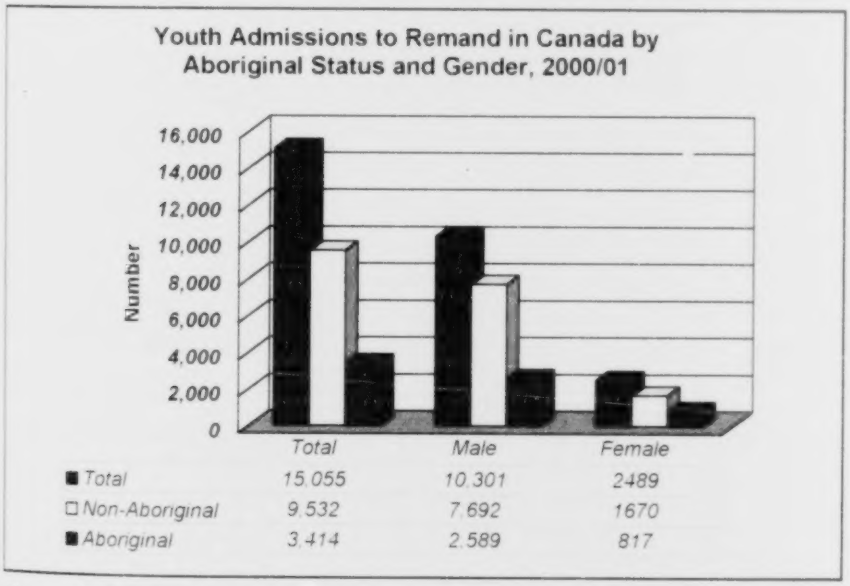
Remand: **To hold a young person temporarily in custody, pursuant to a Remand Warrant, while awaiting trial or sentencing, or prior to commencement of a custodial disposition.**

Secure Custody: **Under the Young Offenders Act a facility is considered secure when youths are detained by security devices, including those which operate with full perimeter security features and/or where youths are under constant observation. The extent to which facilities are "secure varies across jurisdictions.**

Young Offender: **A person who is twelve years of age or older, but less than eighteen years of age, at the time of committing an offence.**

Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

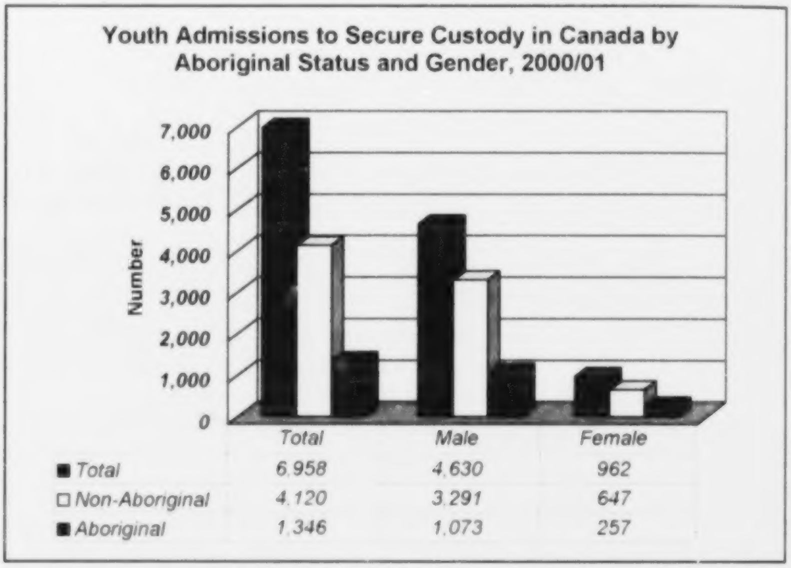
The statistics provided by Marinelli (2002) show that male youth, like male adults, comprise the majority of those individuals involved in crime. Aboriginal youth are over-represented in all areas of youth corrections (described in detail later in this section). Approximately 80 per cent of youth in remand and about 50 per cent of youth in sentenced custody were released within one month of admission. Property offences, such as break and enter, accounted for about 40 per cent of youth sentenced to secure and open custody, while violent offences represented about 27 per cent of youth sentenced to secure and open custody. Most young offenders are on probation for more than six months, the median probation occurring at about the one-year mark. During 2000-2001, British Columbia recorded the lowest rate of youth offenders in custody (9 for every 10,000 youth), while Saskatchewan had the highest rate (36 per 10,000 youth).



	Total	Male	Female
■ Total	15,055	10,301	2489
☐ Non-Aboriginal	9,532	7,692	1670
■ Aboriginal	3,414	2,589	817

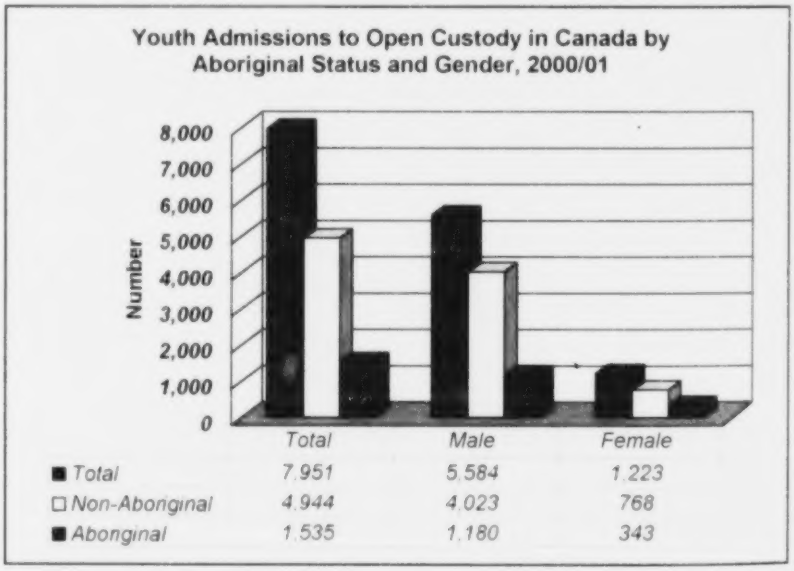
Figure 31-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

Figures 31-37 represent youth admissions to remand, secure custody, open custody and probation by Aboriginal status and gender, 2000/01 in Canada and Saskatchewan. N.B. No remand statistics are available for Saskatchewan, and discrepancies among the figures are due to uncertainty about gender/sex and Aboriginal status (which were listed in the original study as "unknown").



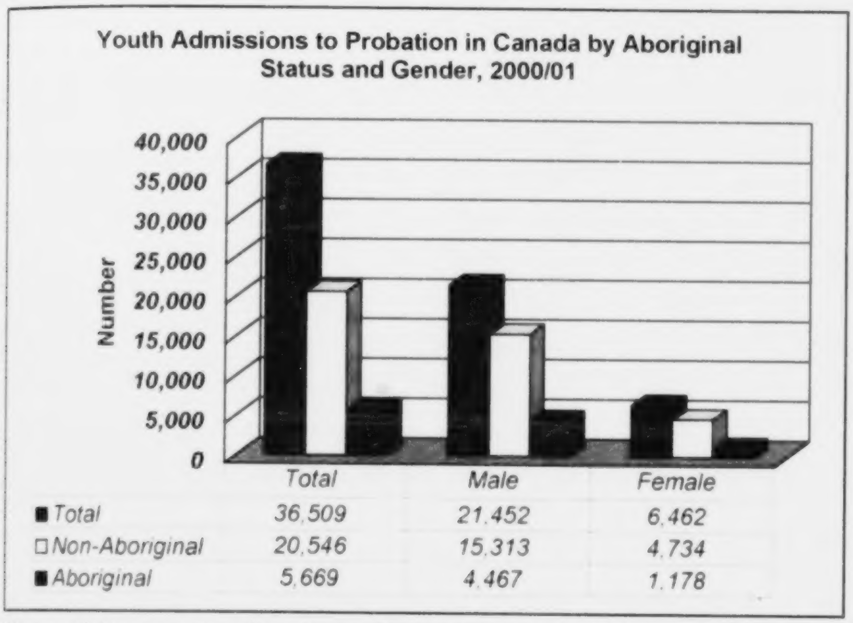
	Total	Male	Female
■ Total	6,958	4,630	962
☐ Non-Aboriginal	4,120	3,291	647
■ Aboriginal	1,346	1,073	257

Figure 32-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.



	Total	Male	Female
■ Total	7,951	5,584	1,223
☐ Non-Aboriginal	4,944	4,023	768
■ Aboriginal	1,535	1,180	343

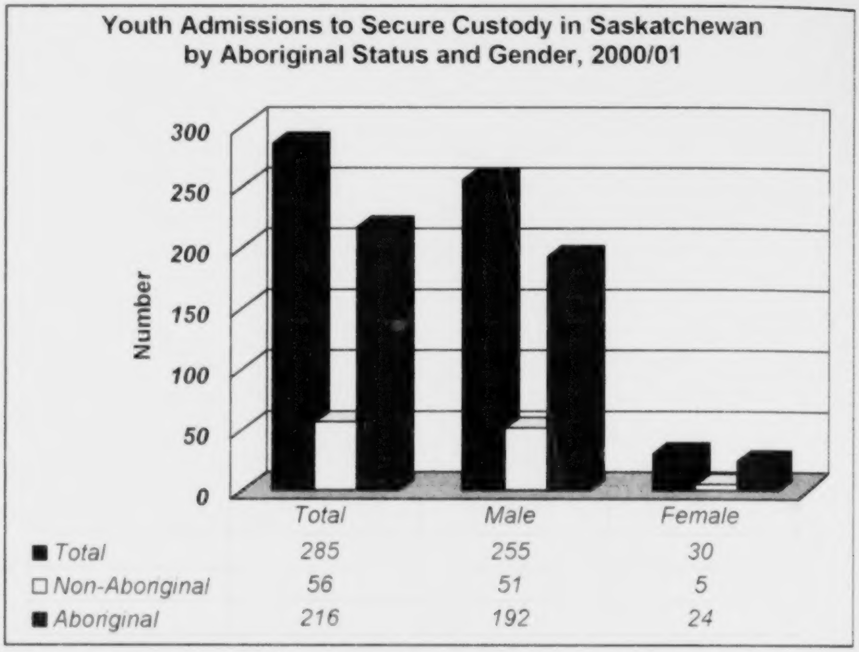
Figure 33-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.



	Total	Male	Female
■ Total	36,509	21,452	6,462
□ Non-Aboriginal	20,546	15,313	4,734
■ Aboriginal	5,669	4,467	1,178

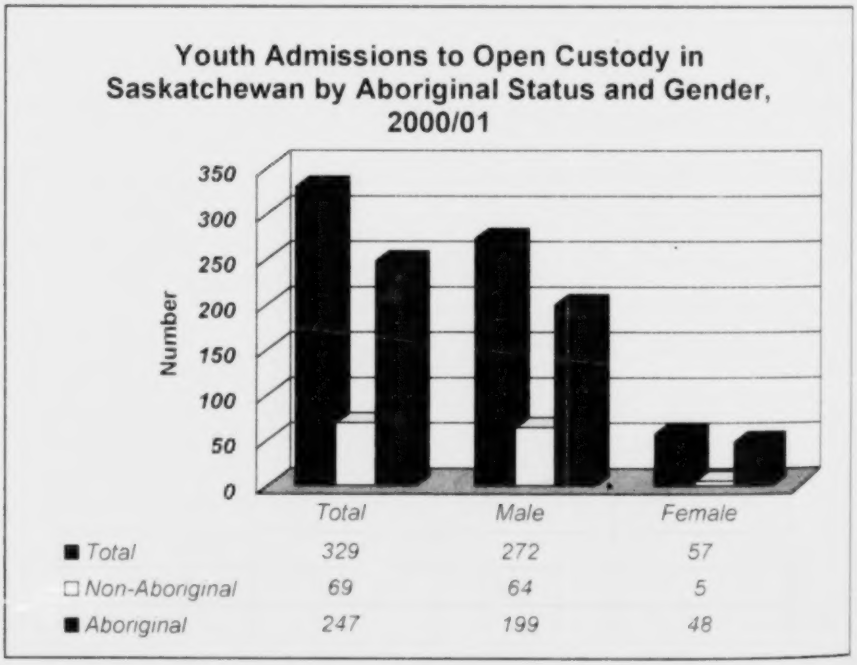
Figure 34-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

The overview presented by Marinelli (2002) gives a useful context for the following discussion of Aboriginal over-representation in the youth correctional system. Her data importantly reveals that in 2000-2001 about 25 per cent of youth admitted to remand or sentenced custody were Aboriginal youth at a time when only 5 per cent of the youth population in Canada were Aboriginal youth. A comparison of the Canadian versus the Saskatchewan statistics across the three areas of youth custody and community services reveals stark differences between Aboriginal and non-Aboriginal youth rates of participation in a 2000 youth population (12 to 17 years of age) for Canada and Saskatchewan respectively of 2,452,048 and 95,418.



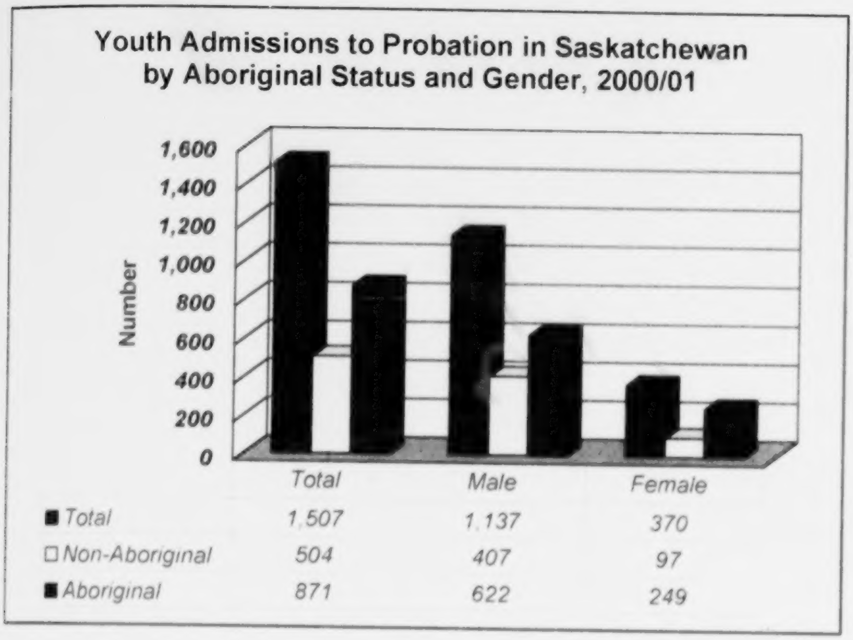
	Total	Male	Female
■ Total	285	255	30
☐ Non-Aboriginal	56	51	5
■ Aboriginal	216	192	24

Figure 35-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.



	Total	Male	Female
■ Total	329	272	57
☐ Non-Aboriginal	69	64	5
■ Aboriginal	247	199	48

Figure 36-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.



	Total	Male	Female
■ Total	1,507	1,137	370
☐ Non-Aboriginal	504	407	97
■ Aboriginal	871	622	249

Figure 37-Source: Canadian Centre for Justice Statistics (CCJS). (2002). *Youth Custody and Community Services Data Tables, 2000/01*. Ottawa: Minister of Industry.

In an effort to address the issue of over-representation of Aboriginal youth at every stage of the criminal justice process and react to charges that the justice system fails to meet the needs of Aboriginal youth, Bittle, Quann, Hattem, & Muise (2002) provide an extensive analysis of a one-day snapshot of Aboriginal youth in custody across Canada. The number of Aboriginal youth in custody (open, secure, or remand) for that day was 1,148 in total. Of that total, 82 per cent were male. Most of the Aboriginal youth in custody (52 per cent) were between 16 and 17 years of age; although male youth were older than female youth, most were between 14 to 15 years of age. The largest proportion (78 per cent) of Aboriginal youth in custody was Native North American, 90 per cent of whom were Status Indian. The next largest group was Metis (17 per cent), followed by Inuit (3 per cent) and Inuvialuit (2 per cent) youth.

Bittle, Quann, Hattem, & Muise (2002) present data on the type of offence, sentence length, where the youth lived prior to admission, location of the offence, and planned destination upon release. Eighty-six per cent of the Aboriginal youth in the study in open and secure custody were found guilty of a property offence (48 per cent) or an offence against the person (38 per cent). For those Aboriginal youth in remand, the numbers were the same for both property offences (39 per cent) and offences against the person (39 per cent). Two years before their admission, most of the Aboriginal youth spent their time in a city (53 per cent) or town (21 per cent), while 23 per cent lived on an Aboriginal reserve during that time. It is interesting to note that younger Aboriginal youth were more likely to have spent time in a city two years prior to being admitted into custody, while the older youth were more likely to have lived on a reserve.

Likewise, 58 per cent of the Aboriginal youth studied committed or allegedly committed their offence in a city. Fifty-five per cent planned on relocating to the city upon their release from custody. For Aboriginal youth, participation in the justice system was primarily a city-based experience.

In the bulk of their report, Bittle, Quann, Hattem, & Muise (2002) also analyze the data by province and territory. For Saskatchewan, 264 Aboriginal youth were recorded. Overall, Ontario had the largest proportion of Aboriginal youth in custody (24 per cent) while Saskatchewan was second with 23 per cent. Eighty-three per cent of the Saskatchewan population was male, similar to the Canadian rate. However, compared to national statistics, a larger proportion of female Aboriginal youth were represented in the older age group (55 per cent in the 16 to 17 years of age), and more of the youth (83 per cent) were Native North American. This group included a larger proportion of Status Indian youth (93 per cent). For Saskatchewan Aboriginal youth, conflict with the justice system was primarily urban. Similar to the Canadian data, most Aboriginal youth in Saskatchewan committed their offence or alleged offence in a city, and most planned on relocating to a city upon release. Many of the Aboriginal youth experienced conflict with the justice system in the city even though they lived on-reserve.

According to data received from Corrections and Public Safety Saskatchewan (McIlmoyl, 2003b) the majority of Aboriginal youth in both open and secure custody are Native North American (including status and non-status) the largest proportion being Aboriginal Status Indian youth. Metis youth account for 10 to 14 per cent of the population in open and secure custody from 1998-99 to 2002-03. It appears that the increase in Aboriginal youth defined as Status Indian may be due, in part, to changing definitions: for example, as the 'Status Indian' numbers in open custody increase from 1999-00 to 2002-03, the youth defined as 'Other' declines at approximately the same rate (see Figures 38 and 39).

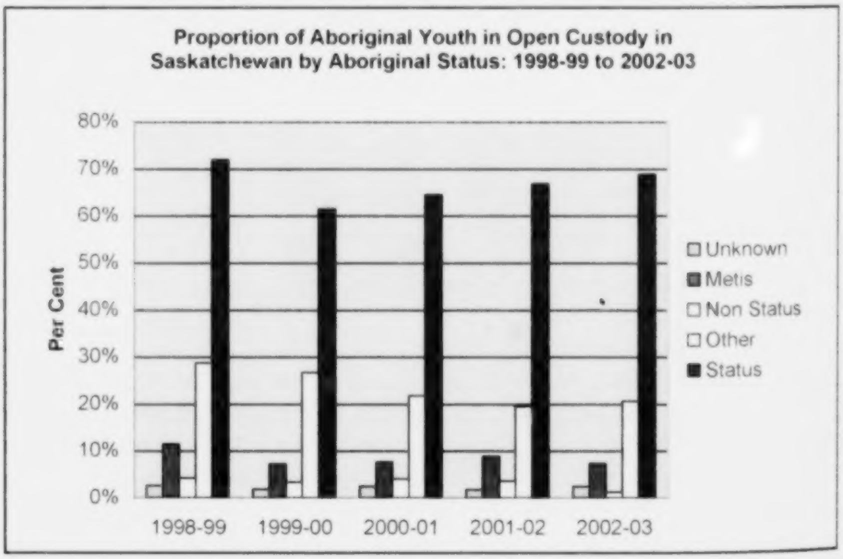


Figure 38-Source: McIlmoyl (2003b).

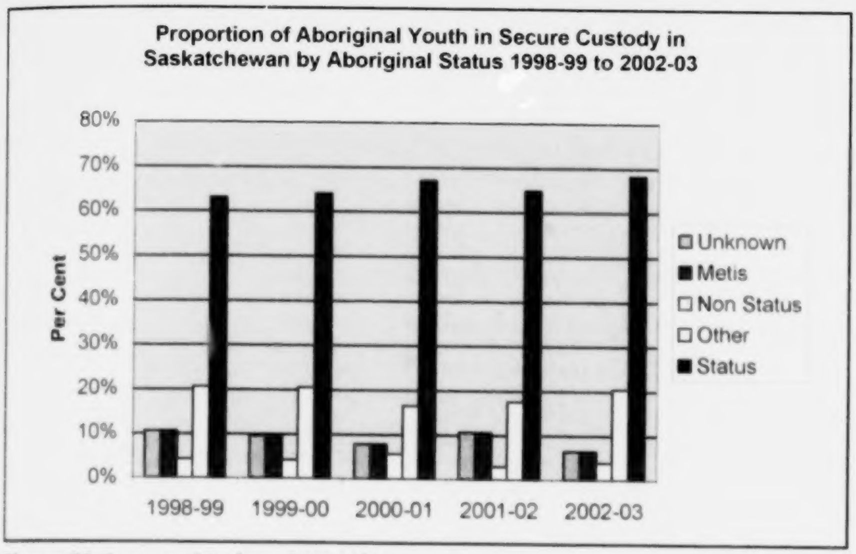


Figure 39-Source: McIlmoyl (2003b).

5.7 Justice System Participation and Cost Projections

Over the past 20 years and more, a cadre of analysts, writers, and researchers has studied the continued "over-representation" of Aboriginal peoples in the Canadian justice system. They have done so from a number of different angles and have made numerous recommendations. In this section, to add impetus to recommendations for change, projections on the cost of the continued Aboriginal participation in the five justice sectors of policing, legal aid, prosecutions, courts, and corrections (for youth and adult offenders) are calculated. We begin with the overall cost of operating these five sectors in Saskatchewan, along with figures on how many people in Saskatchewan are involved and participate in these sectors. Based on historical financial data and rates of participation, projections are presented for future costs and participation rates over the 20-year period starting 2002 and ending 2021. In most cases, the year 2001 (or 2000-01) provides the base line figures on which projections are made.

The proportional representation of Aboriginal peoples within the total number of those that participate in the five sectors of justice is then calculated, and projected to 2021 using growth rate projections from the total Aboriginal population in Saskatchewan. Proportional costs are then calculated for the Aboriginal participants across all five sectors of justice. The analysis ends with the summation of all of the cost projections, culminating in a grand total: the overall cost of Aboriginal participation in the justice system of Canada over the 20-year period starting 2002 and ending 2021—if nothing is done to curb the increase in Aboriginal participation. This final financial figure is but one symbol—one strong indication—of the cost of doing nothing for Aboriginal people in particular and for the Saskatchewan population in general! These figures too add to incentives for change, incentives to reassess the non-financial benefits as well as the financial costs of what we currently do in the name of justice and what we might do alternatively to achieve the Commission mandate of working together for "a healthy, just, prosperous and safe Saskatchewan."

The analysis begins with a section on policing forecasts, followed by a section that combines three areas of justice including prosecutions, courts, and legal aid. The third and fourth sections necessarily divide the analysis of corrections into more manageable provincial and federal corrections segments. The final section presents all five areas of justice combined into a final financial projection: a numerical picture of the cost of doing nothing.

In the following analysis it is assumed that the costs of Aboriginal adult and youth participation in justice, such as provincial corrections, is proportional to their numbers over the total participation rate. It is further assumed that growth in the participation rates and associated costs in provincial youth and adult corrections are a function of the growth rate of Aboriginal youth and adults in the general Aboriginal population of Saskatchewan. Yet it is important to acknowledge that ours is a crude calculus here because it reduces the complex human interactions of the justice system, including systemic and other barriers to justice, to a matter of statistical trends. But those trends (even if they omit such substantial variables) do tell part of the story in that if we do nothing to change the way we think, act, and react to the statistical trends of the past, then this is what the picture might look like in 2021.

5.7.1 Policing

In Saskatchewan, the cost of policing across municipal, provincial and federal sectors has risen consistently over the five years beginning 1998 and ending 2002 (see Table 4). Saskatchewan Justice and Saskatchewan Corrections and Public Safety (2003) report that: "Since 1999, Saskatchewan has increased the annual policing budget by a record $18 million, which has provided 132 more police officers."

Table 4-The Historical Cost of Policing in Saskatchewan by Jurisdiction (1998 to 2002)

Jurisdiction	1998	1999	2000	2001	2002	Growth rate
Municipal	$88,810,000	$93,844,000	$98,558,000	$102,151,000	$106,276,000	3.656%
Provincial	$57,845,000	$57,294,000	$63,030,000	$63,956,000	$69,191,000	3.647%
Federal	$67,412,000	$62,926,000	$67,102,000	$74,485,000	$87,811,000	5.430%

These historic numbers provide the basis for the calculation of a rate of growth for policing across each of the three jurisdictional cost centres: municipal (3.656 per cent), provincial (3.647 per cent), and federal (5.430 per cent). These growth rates are then projected forward to 2021, providing figures related to the cost of policing in Saskatchewan across municipal, provincial, and federal policing for the period 2002 to 2021. These projections, forecast at the medium discount rate of 3 per cent, are presented in Table 5.

Table 5-The Projected Cost of Policing in Saskatchewan by Jurisdiction (2001 to 2021) at 3 Per Cent Discount Rate

	Municipal Gov Exp	Provincial Gov Exp	Federal Gov Exp	Total Policing Costs all Gov
2000-2001 (base)	98,558,000	63,030,000	67,102,000	228,690,000
2001-2002 (base)	102,151,000	63,956,000	74,485,000	240,592,000
2002-2003 (base)	106,276,000	69,191,000	87,811,000	263,278,000
2003-2004	106,973,226	69,638,669	89,944,410	266,556,305
2004-2005	107,675,027	70,089,235	92,129,652	269,893,914
2005-2006	108,381,432	70,542,715	94,367,986	273,292,133
2006-2007	109,092,471	70,999,130	96,660,700	276,752,302
2007-2008	109,808,175	71,458,498	99,009,118	280,275,791
2008-2009	110,528,574	71,920,838	101,414,591	283,864,004
2009-2010	111,253,700	72,386,169	103,878,507	287,518,376
2010-2011	111,983,583	72,854,511	106,402,285	291,240,378
2011-2012	112,718,254	73,325,883	108,987,379	295,031,516
2012-2013	113,457,745	73,800,305	111,635,279	298,893,329
2013-2014	114,202,087	74,277,797	114,347,511	302,827,395
2014-2015	114,951,313	74,758,378	117,125,638	306,835,328
2015-2016	115,705,454	75,242,068	119,971,261	310,918,783
2016-2017	116,464,543	75,728,888	122,886,019	315,079,450
2017-2018	117,228,611	76,218,857	125,871,593	319,319,062
2018-2019	117,997,693	76,711,997	128,929,703	323,639,393
2019-2020	118,771,819	77,208,327	132,062,112	328,042,258
2020-2021	119,551,025	77,707,869	135,270,623	332,529,517
Total (2001/02 to 2020/21)	**2,245,171,731**	**1,458,017,136**	**2,163,190,365**	**5,866,379,233**

At the 2 per cent discount rate the total Saskatchewan costs for policing would be $6,418,668,756 ($2,452,562,957 municipal, $1,592,899,829 provincial, and $2,373,205,970 federal). At the 4 per cent discount rate the total Saskatchewan costs for policing would be $5,373,711,521 ($2,060,090,439 municipal, $1,337,643,566 provincial, and $1,975,977,516 federal).

The Aboriginal proportion of the costs of policing in Saskatchewan is recorded in Table 6.

Table 6- The Projected Cost of Policing in Saskatchewan (Aboriginal) by Jurisdiction (2001 to 2021) at a 3 Per Cent Discount Rate

	Municipal Gov Exp	Provincial Gov Exp	Federal Gov Exp	Total Policing Costs all Gov
2000-2001	51,250,160	32,775,600	34,893,040	118,918,800
2001-2002	53,574,999	33,542,918	39,065,049	126,182,965
2002-2003	56,352,365	36,688,213	46,561,383	139,601,962
2003-2004	57,339,162	37,327,311	48,211,476	142,877,949
2004-2005	58,335,445	37,972,470	49,913,378	146,221,293
2005-2006	59,341,125	38,623,628	51,668,467	149,633,221
2006-2007	60,356,111	39,280,725	53,478,154	153,114,990
2007-2008	61,380,307	39,943,698	55,343,876	156,667,881
2008-2009	62,413,617	40,612,481	57,267,105	160,293,204
2009-2010	63,455,944	41,287,011	59,249,344	163,992,299
2010-2011	64,507,186	41,967,219	61,292,127	167,766,532
2011-2012	65,567,242	42,653,038	63,397,024	171,617,304
2012-2013	66,636,008	43,344,399	65,565,637	175,546,044
2013-2014	67,713,379	44,041,232	67,799,604	179,554,214
2014-2015	68,799,248	44,743,466	70,100,598	183,643,312
2015-2016	69,893,508	45,451,030	72,470,329	187,814,867
2016-2017	70,996,051	46,163,853	74,910,543	192,070,447
2017-2018	72,106,768	46,881,861	77,423,026	196,411,655
2018-2019	73,225,549	47,604,983	80,009,601	200,840,133
2019-2020	74,352,284	48,333,144	82,672,133	205,357,561
2020-2021	75,486,862	49,066,273	85,412,525	209,965,660
Total (2001/02 to 2020/21)	1,301,833,162	845,528,952	1,261,811,378	3,409,173,492

At the 2 per cent discount rate the total Saskatchewan costs for policing would be $3,741,646,007 ($1,426,544,106 municipal, $926,636,974 provincial, and $1,388,464,926 federal). At the 4 per cent discount rate the total Saskatchewan costs for policing would be $3,113,088,064 ($1,190,728,501 municipal, $773,269,606 provincial, and $1,149,089,957 federal).

Figure 40 presents the projected Aboriginal policing costs as a proportion of the total policing costs (including all jurisdictions combined). Figures 41 and 42 project the Aboriginal participation rates (2001 to 2021), based on the calculations presented in Table 7. The calculations used to create the participation rate projections (and associated costs) are based on the assumption that the participation rate of Aboriginal individuals involved in criminal activity during 2000 to 2001 period (52 per cent) is equal to the proportional costs of Aboriginal involvement in policing (starting at 52 per cent of the total costs 2000-01).

Table 7-Projected Growth Rate of Aboriginal and Non-Aboriginal Participation in Policing Sector in Saskatchewan

	Total Number of Individuals Accused of Criminal Activity	Number of Aboriginals Accused of Criminal Activity	% of Abor Participation Accused of Criminal Activity	% of Non-Abor Participation Accused of Criminal Activity
2000-2001	18250	9490	52.00%	48.00%
2001-2002	18350	9624	52.45%	47.55%
2002-2003	18576	9850	53.02%	46.98%
2003-2004	18807	10081	53.60%	46.40%
2004-2005	19043	10317	54.18%	45.82%
2005-2006	19285	10559	54.75%	45.25%
2006-2007	19532	10806	55.33%	44.67%
2007-2008	19786	11060	55.90%	44.10%
2008-2009	20045	11319	56.47%	43.53%
2009-2010	20311	11585	57.04%	42.96%
2010-2011	20582	11856	57.60%	42.40%
2011-2012	20860	12134	58.17%	41.83%
2012-2013	21145	12419	58.73%	41.27%
2013-2014	21436	12710	59.29%	40.71%
2014-2015	21734	13008	59.85%	40.15%
2015-2016	22039	13313	60.41%	39.59%
2016-2017	22351	13625	60.96%	39.04%
2017-2018	22671	13945	61.51%	38.49%
2018-2019	22998	14272	62.06%	37.94%
2019-2020	23332	14606	62.60%	37.40%
2020-2021	23675	14949	63.14%	36.86%
Average	20828	12102	57.85%	42.15%

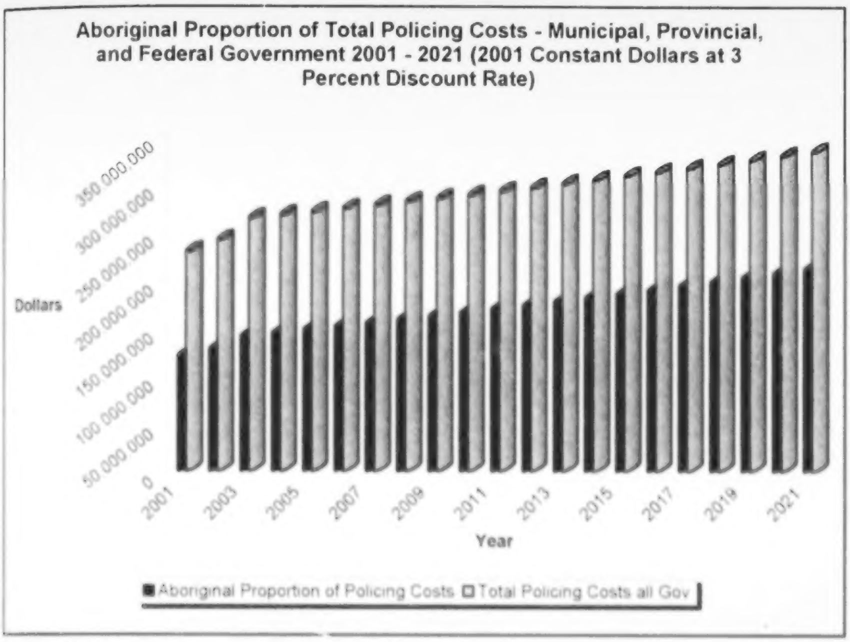


Figure 40

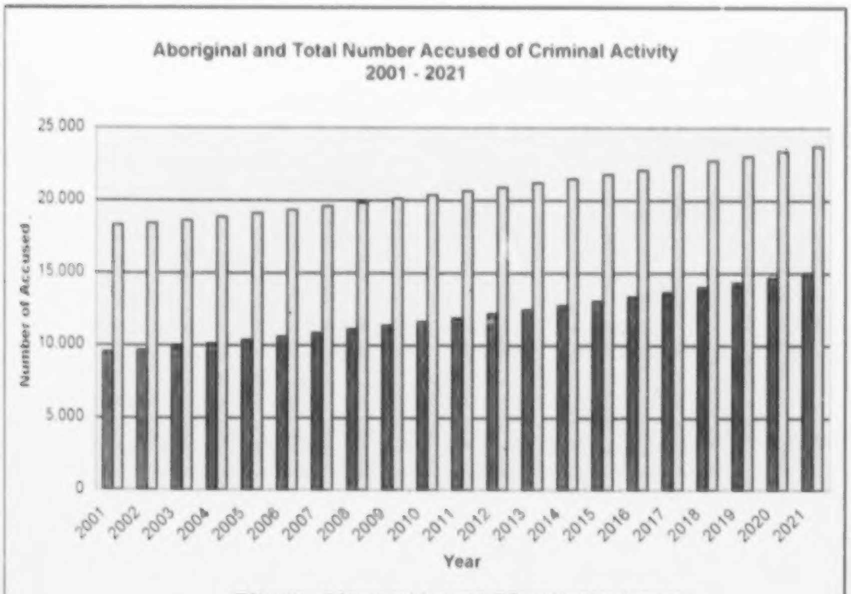


Figure 41

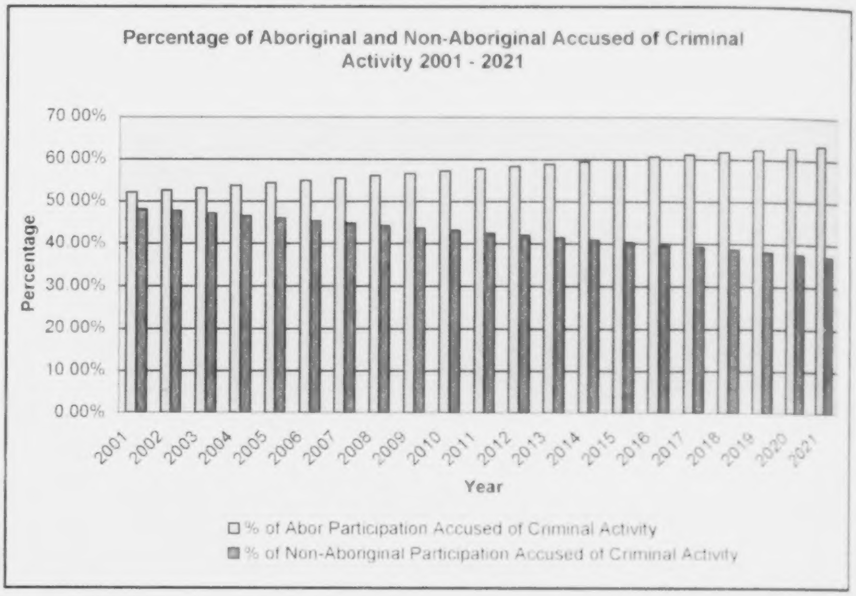


Figure 42

5.7.2 Prosecutions, Courts, and Legal Aid

In Saskatchewan, the cost of the justice sectors of prosecutions, courts, and legal aid has risen consistently over the nine years beginning 1992-93 and ending 2000-01 (see Table 8 for 1996-2001).

Table 8-The Historical Cost of Prosecutions, Courts, and Legal Aid in Saskatchewan (1996/97 to 2000/01)

	Court Costs	Prosecution Costs	Legal Aid Costs
96-97	26,494,000	7,136,500	8,909,000
97-98			9,560,000
98-99	38,073,000		10,111,000
99-00			10,250,000
00-01	40,880,000	10,220,000	11,242,000

Based on these historical cost figures for the justice sectors of prosecutions, courts, and legal aid in Saskatchewan, Table 9 presents the projections across the three cost areas for Saskatchewan. Table 10 presents the projected Aboriginal proportion of cost of courts, prosecution, and legal aid in Saskatchewan (2001 to 2021) at a 3 per cent discount rate.

Table 9-The Projected Cost of Courts, Prosecution, and Legal Aid in Saskatchewan (2001 to 2021) at a 3 Per Cent Discount Rate

	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2001	40,880,000	10,220,000	11,242,000	62,342,000
2002	41,133,778	10,873,413	11,577,828	63,585,019
2003	41,389,132	11,568,601	11,923,687	64,881,421
2004	41,646,072	12,308,237	12,279,878	66,234,187
2005	41,904,606	13,095,160	12,646,710	67,646,476
2006	42,164,745	13,932,396	13,024,500	69,121,640
2007	42,426,499	14,823,160	13,413,575	70,663,234
2008	42,689,878	15,770,874	13,814,273	72,275,025
2009	42,954,892	16,779,181	14,226,941	73,961,014
2010	43,221,551	17,851,953	14,651,937	75,725,440
2011	43,489,866	18,993,312	15,089,628	77,572,806
2012	43,759,846	20,207,645	15,540,394	79,507,884
2013	44,031,502	21,499,615	16,004,625	81,535,742
2014	44,304,845	22,874,186	16,482,725	83,661,756
2015	44,579,884	24,336,641	16,975,106	85,891,632
2016	44,856,631	25,892,598	17,482,196	88,231,425
2017	45,135,096	27,548,033	18,004,435	90,687,564
2018	45,415,290	29,309,309	18,542,273	93,266,872
2019	45,697,223	31,183,192	19,096,179	95,976,594
2020	45,980,906	33,176,880	19,666,631	98,824,417
2021	46,266,350	35,298,035	20,254,124	101,818,509

Table 10-The Projected Aboriginal Proportion of Cost of Courts, Prosecution, and Legal Aid in Saskatchewan (2001 to 2021) at a 3 Per Cent Discount Rate

	Court Costs	Costs	Costs	Total
2001	21,257,600	5,314,400	5,845,840	32,417,840
2002	21,573,378	5,702,764	6,072,208	33,348,350
2003	21,946,399	6,134,198	6,322,481	34,403,078
2004	22,322,883	6,597,389	6,582,188	35,502,461
2005	22,702,793	7,094,607	6,851,649	36,649,049
2006	23,086,089	7,628,281	7,131,189	37,845,560
2007	23,472,733	8,201,008	7,421,147	39,094,888
2008	23,862,684	8,815,565	7,721,869	40,400,118
2009	24,255,901	9,474,920	8,033,713	41,764,534
2010	24,652,343	10,182,246	8,357,048	43,191,636
2011	25,051,966	10,940,935	8,692,251	44,685,152
2012	25,454,727	11,754,614	9,039,714	46,249,055
2013	25,860,584	12,627,155	9,399,837	47,887,576
2014	26,269,491	13,562,698	9,773,035	49,605,224
2015	26,681,405	14,565,668	10,159,732	51,406,804
2016	27,096,279	15,640,788	10,560,367	53,297,434
2017	27,514,070	16,793,108	10,975,390	55,282,568
2018	27,934,731	18,028,018	11,405,265	57,368,015
2019	28,358,217	19,351,280	11,850,471	59,559,968
2020	28,784,483	20,769,041	12,311,497	61,865,021
2021	29,213,481	22,287,872	12,788,851	64,290,204

Figure 43 presents the projected Aboriginal court, prosecution, and legal aid costs as a proportion of the total court, prosecution, and legal aid costs.

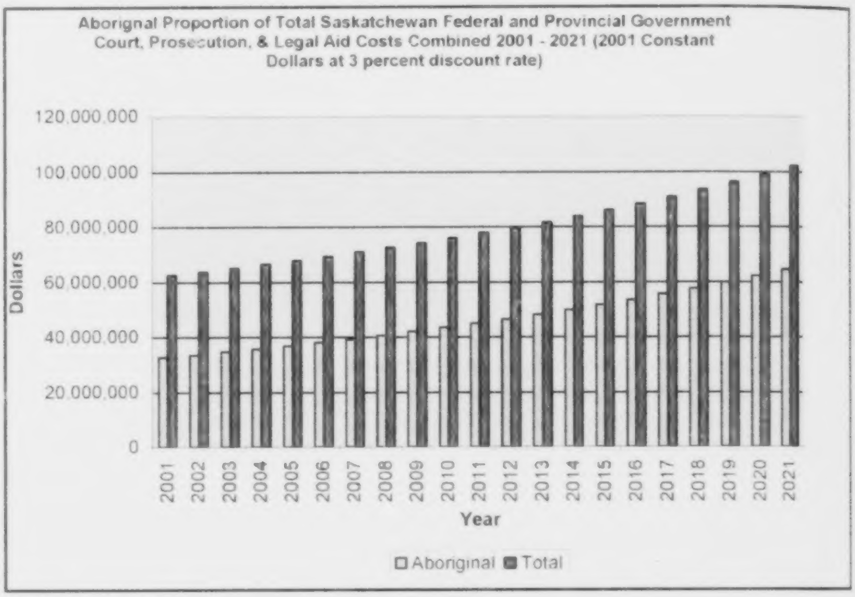


Figure 43

5.7.3 *Provincial Corrections*

For corrections across Canada, according to Taylor-Butts (2002), the Canadian governments spent a total of approximately $11.14 billion on the five sectors of justice in 2000-2001, including $2,454 million on adult corrections (provincial and federal). Correctional costs associated with youth offenders (a provincial responsibility) are not included in the Taylor-Butts (2002) analysis. In Saskatchewan, the historical costs associated with adult and youth offenders in provincial corrections are presented in the following tables.

Table 11-Cost of Adult Offenders: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Community Supervision Services	Headquarters/ Other	Total
1998-1999	$35,355,561	$2,206,389	--	--	$37,561,950
1999-2000	$40,145,691	$2,233,621	$7,241,000	$1,491,000	$42,379,312
2000-2001	$43,364,726	$2,409,983	$7,655,000	$1,596,000	$45,774,709
2001-2002	$44,918,671	$2,584,779	$8,148,000	$1,769,000	$47,503,450
2002-2003	$46,999,935	$2,654,424	--	--	$49,654,359

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 12-Cost of Young Offenders: Saskatchewan Provincial Corrections

Year	Secure Custody	Open Custody	Total
1998-1999	$17,123,599	$3,554,435	$20,678,034
1999-2000	$18,148,963	$4,090,269	$22,239,232
2000-2001	$20,345,669	$4,225,959	$24,571,628
2001-2002	$21,029,176	$4,674,694	$25,703,870
2002-2003	$21,668,400	$4,795,680	$26,464,080

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Based on average daily custody counts, tables 13 and 14 present the participation rates for adult and youth offenders in Saskatchewan's provincial correctional facilities.

Table 13-Adult Offender Participation Rates: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Remand	Total
1998-1999	889	69	245	1203
1999-2000	787	69	287	1143
2000-2001	754	76	300	1130
2001-2002	766	73	303	1142
2002-2003	794	73	346	1213
Average	798	72	296	1166

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 14-Youth Offender Participation Rates: Saskatchewan Provincial Corrections

Year	Secure	Open	Remand	Total
1998-1999	187	135	75	397
1999-2000	162	121	69	352
2000-2001	161	101	79	341
2001-2002	138	102	95	335
2002-2003	145	113	73	331
Average	159	114	78	351

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002*. Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Based on average daily custody counts, tables 15 and 16 present the percentage of Aboriginal offenders (adult and youth) in Saskatchewan's provincial correctional facilities.

Table 15-Percentage of Adult Aboriginal Offenders: Saskatchewan Provincial Corrections

Year	Institutions	CTR	Remand
1998-1999	80%	78%	81%
1999-2000	79%	83%	80%
2000-2001	79%	84%	80%
2001-2002	80%	79%	80%
2002-2003	81%	80%	80%
Average	80%	81%	80%

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002.* Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Table 16-Percentage of Youth Aboriginal Offenders: Saskatchewan Provincial Corrections

Year	Secure	Open	Remand
1998-1999	78%	74%	76%
1999-2000	77%	72%	75%
2000-2001	80%	76%	78%
2001-2002	78%	79%	78%
2002-2003	78%	77%	78%
Average	78%	76%	77%

Sources: Canadian Centre for Justice Statistics (CCJS). (2003). *Adult Correctional Services in Canada, 2001-2002.* Ottawa: Minister of Industry **and** McIlmoyl (2003a).

Tables 17 and 18 present the forecast costs for adult and youth offenders in the Saskatchewan provincial corrections system. At a 3 per cent rate of inflation, it is projected that costs will almost double over the projected 20-year period (2002-2021). Tables 19 and 20 present the Aboriginal proportion of the total costs (base and projected) presented in tables 17 and 18. In the base year (2000-2001) the Aboriginal adult proportion of the total provincial adult costs was approximately 80 per cent ($44.028 million over $55.025 million). The Aboriginal adult proportion of the total adult cost is projected to rise to approximately 86 per cent in 2021 ($80.825 million over $94.176 million). In the base year (2000-2001) the Aboriginal youth proportion of the total provincial adult costs was approximately 78 per cent ($18.758 million over $24.571 million). The Aboriginal youth proportion of the total adult cost is projected to rise to over 80 per cent in 2021 ($35.060 million over $43.589 million).

Table 17-Provincial Corrections: Projections (2002 – 2021) of the Cost of Adult Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

	Institutions	CTR	Community Supervision Services	Headquarters / Central Services	Sub Total
2000-2001 (base)	**$43,364,726**	**$2,409,983**	**$7,655,000**	**$1,596,000**	**$55,025,709**
2001-2002	$44,918,671	$2,584,779	$8,148,000	$1,769,000	$57,420,450
2002-2003	$46,203,345	$2,604,682	$8,239,258	$1,819,682	$58,866,966
2003-2004	$47,524,761	$2,679,176	$8,331,537	$1,871,816	$60,407,289
2004-2005	$48,883,969	$2,755,800	$8,424,851	$1,925,443	$61,990,063
2005-2006	$50,282,050	$2,834,616	$8,519,209	$1,980,607	$63,616,482
2006-2007	$51,720,117	$2,915,686	$8,614,624	$2,037,352	$65,287,779
2007-2008	$53,199,312	$2,999,075	$8,711,108	$2,095,722	$67,005,216
2008-2009	$54,720,813	$3,084,848	$8,808,672	$2,155,764	$68,770,097
2009-2010	$56,285,828	$3,173,075	$8,907,329	$2,217,527	$70,583,759
2010-2011	$57,895,603	$3,263,825	$9,007,091	$2,281,059	$72,447,578
2011-2012	$59,551,417	$3,357,170	$9,107,971	$2,346,411	$74,362,969
2012-2013	$61,254,587	$3,453,185	$9,209,980	$2,413,636	$76,331,389
2013-2014	$63,006,469	$3,551,946	$9,313,132	$2,482,787	$78,354,333
2014-2015	$64,808,454	$3,653,532	$9,417,439	$2,553,918	$80,433,343
2015-2016	$66,661,975	$3,758,023	$9,522,914	$2,627,088	$82,570,001
2016-2017	$68,568,508	$3,865,502	$9,629,571	$2,702,354	$84,765,935
2017-2018	$70,529,567	$3,976,056	$9,737,422	$2,779,777	$87,022,822
2018-2019	$72,546,713	$4,089,771	$9,846,481	$2,859,417	$89,342,382
2019-2020	$74,621,549	$4,206,738	$9,956,762	$2,941,340	$91,726,389
2020-2021	$76,755,725	$4,327,051	$10,068,278	$3,025,609	$94,176,663
Totals	**$1,189,939,431**	**$67,134,537**	**$181,521,628**	**$46,886,309**	**$1,485,481,905**

Table 18- Provincial Corrections: Projections (2002 – 2021) of the Cost of Youth Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003). Includes TOTAL Adult and Youth Offender Costs

Year	**Secure**	**Open**	**Youth**	**Youth Offender**
2000-2001 (base)	**$20,345,669**	**$4,225,959**	**$24,571,628**	**$55,025,709**
2001-2002	$21,029,176	$4,674,694	$25,703,870	$83,124,320
2002-2003	$21,416,113	$4,822,882	$26,238,995	$85,105,961
2003-2004	$21,810,169	$4,975,767	$26,989,430	$87,396,719
2004-2005	$22,211,476	$5,133,499	$27,761,328	$89,751,390
2005-2006	$22,620,168	$5,296,231	$28,555,302	$92,171,784
2006-2007	$23,036,379	$5,464,121	$29,371,983	$94,659,762
2007-2008	$23,460,248	$5,637,334	$30,212,022	$97,217,238
2008-2009	$23,891,917	$5,816,038	$31,076,086	$99,846,183
2009-2010	$24,331,528	$6,000,406	$31,964,862	$102,548,621
2010-2011	$24,779,228	$6,190,619	$32,879,057	$105,326,634
2011-2012	$25,235,166	$6,386,861	$33,819,398	$108,182,367
2012-2013	$25,699,493	$6,589,325	$34,786,633	$111,118,021
2013-2014	$26,172,364	$6,798,207	$35,781,530	$114,135,864
2014-2015	$26,653,935	$7,013,710	$36,804,882	$117,238,225
2015-2016	$27,144,367	$7,236,044	$37,857,502	$120,427,502
2016-2017	$27,643,824	$7,465,427	$38,940,226	$123,706,162
2017-2018	$28,152,470	$7,702,081	$40,053,917	$127,076,738
2018-2019	$28,670,476	$7,946,237	$41,199,459	$130,541,841
2019-2020	$29,198,012	$8,198,133	$42,377,763	$134,104,152
2020-2021	$29,735,256	$8,458,013	$43,589,767	$137,766,430
Totals	**$502,891,763**	**$127,805,628**	**$675,964,010**	**$2,161,445,915**

Table 19-Provincial Corrections: Projections (2002 – 2021) of the Cost of Aboriginal Adult Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

Year	Institutions	CTR	Community Supervision Services	Headquarters / Central Services	Total Costs: Adult Aboriginal Participation	Total Costs: Adult including Aboriginal Adults
2000-2001	**$34,624,744**	**$1,936,327**	**$6,185,240**	**$1,281,950**	$44,028,262	$55,025,709
2001-2002	$35,865,498	$2,088,501	$6,544,694	$1,420,909	$45,919,602	$57,420,450
2002-2003	$36,891,251	$2,104,583	$6,617,995	$1,461,618	$47,075,447	$58,866,966
2003-2004	$38,122,370	$2,174,338	$6,722,417	$1,510,301	$48,529,427	$60,407,289
2004-2005	$39,391,215	$2,246,221	$6,827,916	$1,560,475	$50,025,827	$61,990,063
2005-2006	$40,698,870	$2,320,293	$6,934,499	$1,612,182	$51,565,845	$63,616,482
2006-2007	$42,046,451	$2,396,616	$7,042,173	$1,665,468	$53,150,708	$65,287,779
2007-2008	$43,435,104	$2,475,255	$7,150,946	$1,720,377	$54,781,681	$67,005,216
2008-2009	$44,866,007	$2,556,276	$7,260,825	$1,776,956	$56,460,064	$68,770,097
2009-2010	$46,340,374	$2,639,748	$7,371,820	$1,835,254	$58,187,195	$70,583,759
2010-2011	$47,859,450	$2,725,741	$7,483,938	$1,895,318	$59,964,447	$72,447,578
2011-2012	$49,424,519	$2,814,327	$7,597,188	$1,957,201	$61,793,234	$74,362,969
2012-2013	$51,036,898	$2,905,580	$7,711,578	$2,020,954	$63,675,010	$76,331,389
2013-2014	$52,697,943	$2,999,578	$7,827,119	$2,086,631	$65,611,270	$78,354,333
2014-2015	$54,409,049	$3,096,398	$7,943,818	$2,154,287	$67,603,551	$80,433,343
2015-2016	$56,171,650	$3,196,121	$8,061,686	$2,223,979	$69,653,436	$82,570,001
2016-2017	$57,987,220	$3,298,830	$8,180,733	$2,295,766	$71,762,548	$84,765,935
2017-2018	$59,857,276	$3,404,611	$8,300,967	$2,369,707	$73,932,562	$87,022,822
2018-2019	$61,783,379	$3,513,552	$8,422,400	$2,445,864	$76,165,196	$89,342,382
2019-2020	$63,767,132	$3,625,743	$8,545,042	$2,524,302	$78,462,219	$91,726,389
2020-2021	$65,810,186	$3,741,277	$8,668,902	$2,605,084	$80,825,450	$94,176,663
Total	**$988,461,841**	**$56,323,590**	**$151,216,655**	**$39,142,631**	**$1,235,144,717**	**$1,485,481,905**

Table 20-Provincial Corrections: Projections (2002 – 2021) of the Cost of Aboriginal Youth Offender Participation. Based on Constant 2001 Dollars (at 3 per cent discount rate) & Average Offender Numbers from (1998 - 2003)

Year	Secure	Open	Total Costs: Aboriginal Youth	Total Costs: Young Offenders including Aboriginal Youth
2000-2001	**$15,910,313**	**$2,848,533**	**$18,758,846**	**$24,571,628**
2001-2002	$16,444,816	$3,151,005	$19,595,821	$25,703,870
2002-2003	$16,747,400	$3,601,479	$20,348,879	$26,238,995
2003-2004	$17,262,460	$3,715,998	$20,978,457	$26,989,430
2004-2005	$17,793,079	$3,831,494	$21,624,573	$27,761,328
2005-2006	$18,339,723	$3,950,511	$22,290,234	$28,555,302
2006-2007	$18,902,865	$4,073,155	$22,976,021	$29,371,983
2007-2008	$19,482,999	$4,199,535	$23,682,534	$30,212,022
2008-2009	$20,080,627	$4,329,761	$24,410,389	$31,076,086
2009-2010	$20,696,271	$4,463,950	$25,160,221	$31,964,862
2010-2011	$21,330,465	$4,602,220	$25,932,684	$32,879,057
2011-2012	$21,983,759	$4,744,692	$26,728,451	$33,819,398
2012-2013	$22,656,721	$4,891,493	$27,548,214	$34,786,633
2013-2014	$23,349,934	$5,042,752	$28,392,686	$35,781,530
2014-2015	$24,063,999	$5,198,602	$29,262,601	$36,804,882
2015-2016	$24,799,534	$5,359,180	$30,158,714	$37,857,502
2016-2017	$25,557,175	$5,524,627	$31,081,803	$38,940,226
2017-2018	$26,337,578	$5,695,089	$32,032,667	$40,053,917
2018-2019	$27,141,416	$5,870,715	$33,012,131	$41,199,459
2019-2020	$27,969,383	$6,051,659	$34,021,043	$42,377,763
2020-2021	$28,822,194	$6,238,080	$35,060,274	$43,589,767
Total	**$439,762,399**	**$94,535,998**	**$534,298,337**	**$675,964,010**

5.7.4 *Federal Corrections*

The cost of operating the federal correction system in Saskatchewan is rising. The Aboriginal proportion of the total costs are representative of the "over-representation" of Aboriginal peoples in federal corrections in the province. Table 21 presents the historical costs of federal corrections in Saskatchewan (1993-94 to 2001-02). Table 22 shows the average daily costs per individual in the federal corrections system, including the costs for Community Correctional Centres (CCC), the federal corrections term for a halfway house that is owned and operated by the Government of Canada that accommodates federal offenders on conditional release who require a place to live and who have a residency condition attached to their release. The cost/participation breakdown is tabulated on Table 23.

Table 21-Historical Costs for Federal Corrections in Saskatchewan, 1993-94 to 2001-02

	Maximum	Medium	Minimum	Women	CCC	Parole
1993-94	$65,371	$40,008	$39,171	$78,221	$27,001	$8,527
1994-95	$62,305	$41,023	$41,894	$75,771	$30,255	$8,550
1995-96	$68,156	$43,399	$45,170	$74,965	$32,811	$9,145
1996-97	$70,771	$43,422	$45,362	$73,061	$32,795	$10,178
1997-98	$77,556	$47,370	$45,359	$109,870	$26,366	$12,021
1998-99	$87,135	$52,688	$46,988	$113,610	$29,522	$13,114
1999-2000	$96,740	$60,673	$53,634	$115,465	$29,921	$14,534
2000-01	$98,904	$63,931	$57,912	$132,475	$33,799	$15,903
2001-02	$108,277	$71,894	$69,178	$155,589	$41,583	$17,520

Table 22-Average Daily Costs Per Individual in the Federal Corrections System

	Maximum	Medium	Minimum	Women	CCC	Parole
1993-94	$179.10	$109.61	$107.32	$214.30	$73.98	$23.36
1994-95	$170.70	$112.39	$114.78	$207.59	$82.89	$23.42
1995-96	$186.73	$118.90	$123.75	$205.38	$89.89	$25.05
1996-97	$193.89	$118.96	$124.28	$200.17	$89.85	$27.88
1997-98	$212.48	$129.78	$124.27	$301.01	$72.24	$32.93
1998-99	$238.73	$144.35	$128.73	$311.26	$80.88	$35.93
1999-2000	$265.04	$166.23	$146.94	$316.34	$81.98	$39.82
2000-01	$270.97	$175.15	$158.66	$362.95	$92.60	$43.57
2001-02	$296.65	$196.97	$189.53	$426.27	$113.93	$48.00

Table 23-Cost and Participation Breakdown: Federal Corrections in Saskatchewan

	Maximum	Medium	Minimum	Women	CCC	Parole
2000-01	$98,904	$63,931	$57,912	$132,475	$33,799	$15,903
2001-02	$108,277	$71,894	$69,178	$155,589	$41,583	$17,520
Average number of individuals	241	436	99	27	261	180
Total Costs 2000-2001	$23,835,864	$27,873,916	$5,733,288	$3,576,825	$8,821,539	$2,862,540
Total Costs 2001-2002	$26,094,757	$31,345,784	$6,848,622	$4,200,903	$10,853,163	$3,153,600
Aboriginal	142	282	47	20	147	109
Non-Aboriginal	99	154	52	7	114	71
Aboriginal %	58.92%	64.68%	47.47%	74.07%	56.32%	60.56%

Tables 24 and 25 present the total Saskatchewan federal corrections costs. The costs are based on 2001 dollars discounted at a rate of 3 per cent. The projected rate of participation is based on historical participation rate trends for the adult population, aged 18 to 49 years of age. The costs for participation in maximum, medium, minimum, women, CCC, and parole are calculated and projected to 2021.

Table 24-Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for Maximum, Medium, Minimum, and Women

	Maximum	Medium	Minimum	Women
2000-2001	$23,835,864	$27,873,916	$5,733,288	$3,576,825
2001-2002	$26,094,757	$31,345,784	$6,848,622	$4,200,903
2002-2003	$26,816,795	$32,514,701	$7,089,923	$4,408,444
2003-2004	$27,558,811	$33,727,209	$7,339,726	$4,626,238
2004-2005	$28,321,359	$34,984,932	$7,598,330	$4,854,791
2005-2006	$29,105,007	$36,289,556	$7,866,046	$5,094,637
2006-2007	$29,910,338	$37,642,832	$8,143,194	$5,346,331
2007-2008	$30,737,952	$39,046,573	$8,430,107	$5,610,460
2008-2009	$31,588,466	$40,502,660	$8,727,129	$5,887,638
2009-2010	$32,462,514	$42,013,047	$9,034,617	$6,178,510
2010-2011	$33,360,746	$43,579,758	$9,352,938	$6,483,752
2011-2012	$34,283,833	$45,204,893	$9,682,475	$6,804,074
2012-2013	$35,232,461	$46,890,630	$10,023,622	$7,140,221
2013-2014	$36,207,338	$48,639,231	$10,376,789	$7,492,975
2014-2015	$37,209,189	$50,453,039	$10,742,400	$7,863,157
2015-2016	$38,238,761	$52,334,486	$11,120,892	$8,251,627
2016-2017	$39,296,822	$54,286,094	$11,512,720	$8,659,289
2017-2018	$40,384,159	$56,310,479	$11,918,354	$9,087,090
2018-2019	$41,501,582	$58,410,356	$12,338,279	$9,536,027
2019-2020	$42,649,924	$60,588,540	$12,773,000	$10,007,143
2020-2021	$43,830,041	$62,847,950	$13,223,037	$10,501,534
Total	**$684,790,853**	**$907,612,749**	**$194,142,201**	**$138,034,841**

Table 25- Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for CCC, Parole, Headquarters and Grand Total (Tables 24 and 25)

	CCC	Parole	HQ	Grand Total Tables 24 and 25 combined
2000-2001	$8,821,539	$2,862,540	$3,100,000	$75,803,972
2001-2002	$10,853,163	$3,153,600	$3,280,000	$85,776,829
2002-2003	$11,060,994	$3,321,686	$3,401,386	$88,613,929
2003-2004	$11,272,806	$3,498,731	$3,527,264	$91,550,784
2004-2005	$11,488,673	$3,685,213	$3,657,801	$94,591,098
2005-2006	$11,708,674	$3,881,634	$3,793,168	$97,738,721
2006-2007	$11,932,888	$4,088,524	$3,933,545	$100,997,651
2007-2008	$12,161,395	$4,306,441	$4,079,117	$104,372,046
2008-2009	$12,394,278	$4,535,974	$4,230,077	$107,866,223
2009-2010	$12,631,621	$4,777,740	$4,386,623	$111,484,672
2010-2011	$12,873,509	$5,032,392	$4,548,963	$115,232,058
2011-2012	$13,120,029	$5,300,618	$4,717,310	$119,113,231
2012-2013	$13,371,269	$5,583,139	$4,891,888	$123,133,232
2013-2014	$13,627,321	$5,880,719	$5,072,927	$127,297,300
2014-2015	$13,888,276	$6,194,160	$5,260,665	$131,610,886
2015-2016	$14,154,228	$6,524,308	$5,455,351	$136,079,653
2016-2017	$14,425,272	$6,872,052	$5,657,242	$140,709,491
2017-2018	$14,701,507	$7,238,330	$5,866,605	$145,506,524
2018-2019	$14,983,032	$7,624,132	$6,083,715	$150,477,124
2019-2020	$15,269,948	$8,030,496	$6,308,861	$155,627,912
2020-2021	$15,562,358	$8,458,520	$6,542,338	$160,965,778
Total	**$261,481,242**	**$107,988,408**	**$94,694,847**	**$2,388,745,141**

Table 26 & 27 present the Aboriginal proportion of total Saskatchewan federal corrections costs The costs are based on 2001 dollars discounted at a rate of 3 per cent. The projected rate of Aboriginal participation is based on projected growth rates for the adult Aboriginal population, aged 18 to 49 years of age. The proportional costs for Aboriginal participation in maximum, medium, minimum, CCC, parole and for women are calculated and projected to 2021.

Table 26- Aboriginal Proportion of Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for Maximum, Medium, Minimum, and Women

	Maximum	Medium	Minimum	Women
2000-2001	14,044,368	18,028,542	2,721,864	2,649,500
2001-2002	15,375,334	20,274,108	3,251,366	3,111,780
2002-2003	15,950,585	21,201,376	3,406,839	3,284,987
2003-2004	16,545,226	22,168,364	3,569,269	3,467,483
2004-2005	17,159,832	23,176,662	3,738,944	3,659,749
2005-2006	17,794,995	24,227,923	3,916,161	3,862,293
2006-2007	18,451,323	25,323,860	4,101,230	4,075,647
2007-2008	19,129,439	26,466,255	4,294,469	4,300,369
2008-2009	19,829,983	27,656,952	4,496,213	4,537,048
2009-2010	20,553,612	28,897,870	4,706,805	4,786,300
2010-2011	21,301,001	30,190,997	4,926,603	5,048,774
2011-2012	22,072,841	31,538,398	5,155,977	5,325,150
2012-2013	22,869,842	32,942,215	5,395,312	5,616,145
2013-2014	23,692,734	34,404,671	5,645,006	5,922,508
2014-2015	24,542,266	35,928,072	5,905,471	6,245,031
2015-2016	25,419,204	37,514,813	6,177,137	6,584,542
2016-2017	26,324,338	39,167,378	6,460,447	6,941,911
2017-2018	27,258,478	40,888,343	6,755,860	7,318,053
2018-2019	28,222,453	42,680,385	7,063,854	7,713,929
2019-2020	29,217,117	44,546,278	7,384,921	8,130,549
2020-2021	30,243,345	46,488,901	7,719,575	8,568,971
Total	**441,953,947**	**635,683,821**	**104,071,457**	**108,501,220**

Table 27- Aboriginal Proportion of Total Saskatchewan Federal Corrections Costs-based on 2001 dollars-based on Adult Pop (18 - 49) participation rates for CCC, Parole, and Headquarter Costs and Grand Total Tables 26 and 27

	CCC	Parole	HQ	Grand Total Tables 26 and 27 combined
2000-2001	4,968,453	1,733,427	1,870,469	46,016,623
2001-2002	6,112,701	1,909,680	1,979,077	52,014,046
2002-2003	6,292,600	2,029,772	2,071,130	54,237,289
2003-2004	6,476,943	2,157,142	2,167,465	56,551,891
2004-2005	6,665,815	2,292,214	2,268,281	58,961,496
2005-2006	6,859,300	2,435,438	2,373,786	61,469,895
2006-2007	7,057,486	2,587,287	2,484,198	64,081,030
2007-2008	7,260,459	2,748,262	2,599,746	66,798,999
2008-2009	7,468,308	2,918,892	2,720,669	69,628,065
2009-2010	7,681,123	3,099,735	2,847,216	72,572,662
2010-2011	7,898,995	3,291,382	2,979,649	75,637,401
2011-2012	8,122,017	3,494,454	3,118,242	78,827,080
2012-2013	8,350,282	3,709,610	3,263,282	82,146,687
2013-2014	8,583,885	3,937,543	3,415,068	85,601,415
2014-2015	8,822,923	4,178,987	3,573,913	89,196,663
2015-2016	9,067,494	4,434,714	3,740,148	92,938,052
2016-2017	9,317,696	4,705,543	3,914,114	96,831,426
2017-2018	9,573,631	4,992,335	4,096,172	100,882,871
2018-2019	9,835,400	5,295,999	4,286,698	105,098,718
2019-2020	10,103,107	5,617,497	4,486,086	109,485,555
2020-2021	10,376,859	5,957,841	4,694,749	114,050,240
Total	**161,927,022**	**71,794,324**	**63,079,690**	**1,523,931,791**

5.7.5 Overall Participation and Cost Projections

Based on historical data from Statistics Canada, the Canadian Centre for Justi
Statistics, and Saskatchewan Justice and Corrections and Public Safety, the doll
figure costs associated with justice participation in all areas of provinc
responsibility for the administration of justice (federal, provincial, a
municipal) are rising. Assuming the smallest inflation rate of 2 per cent or
constant 2001 dollar (and therefore the least change in the value of the dollar ov
time), the worst case scenario projected for total costs for the total Saskatchew
population over twenty years is $13 billion. In the 20th year (2021), the cost
projected to be close to $880 million—double the 2000-2001 costs of over $4
million (the base year for calculations but not included in the twenty-year tot
The best case scenario (with a discount rate of 4 per cent) is a total cost of cl
to $11 billion over 20 years; year 20 costs of over $610 million as opposed to o
$446 million from 2000-2001. The medium case scenario (with a discount rate
3 per cent) is a total cost of just over $12 billion over 20 years; year 20 costs
over $733 million as opposed to over $446 million from 2000-2001.

The total cost over twenty years of participation by Aboriginal peoples on a 2
cent inflation rate on a constant 2001 dollar is over $8.5 billion with a cost
almost $605 million in the 20th year—a rise of almost 233 per cent over the 20
2001 figure of more than $260 million. The best case scenario for the total c

over twenty years (4 per cent discount rate) is close to $7 billion with a cost of over 419 million in year 20 (an increase of 161 per cent). The medium case scenario for the total cost over twenty years of participation by Aboriginal peoples (3 per cent discount rate) is close to $7.7 billion with a cost of over 504 million in year 20.

At the nominal rate (zero inflation), the projected total costs for the total Saskatchewan population over twenty years is just over $16 billion. In the 20th year (2021), the cost is projected to be close to $1.2 billion. At the nominal rate, the total cost over twenty years of participation by Aboriginal peoples is close to $9.9 billion with a cost of over 790 million in year 20.

For a review of the projected total justice participation costs for Saskatchewan (total) and the Saskatchewan Aboriginal proportion (at 2 per cent, 3 per cent, and 4 per cent discount rates), see Tables 28 through 33 (below). Figures 44 and 45 present the total cost of Aboriginal participation in Saskatchewan divided by federal and provincial corrections, policing, courts, prosecutions, and legal aid; and compares 2001 base data with the 2021 forecast.

Table 28

Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (2%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,829	240,592,000	41,542,578	10,975,613	11,690,248	473,701,588
2002-2003	59,441,171	26,498,033	89,471,697	263,278,000	42,215,896	11,787,092	12,156,368	504,846,257
2003-2004	61,590,911	27,518,780	93,331,640	269,189,085	42,900,126	12,658,567	12,641,074	519,830,184
2004-2005	63,820,565	28,581,005	97,364,292	275,251,368	43,595,447	13,594,475	13,145,106	535,352,257
2005-2006	66,133,154	29,684,232	101,577,651	281,469,180	44,302,037	14,599,578	13,669,236	551,435,067
2006-2007	68,531,811	30,830,043	105,980,098	287,846,992	45,020,080	15,678,994	14,214,263	568,102,281
2007-2008	71,019,791	32,020,083	110,580,419	294,389,410	45,749,760	16,838,216	14,781,022	585,378,701
2008-2009	73,600,474	33,256,058	115,387,815	301,101,186	46,491,267	18,083,145	15,370,379	603,290,325
2009-2010	76,277,367	34,539,742	120,411,936	307,987,218	47,244,792	19,420,117	15,983,236	621,864,408
2010-2011	79,054,111	35,872,976	125,662,893	315,052,558	48,010,531	20,855,938	16,620,529	641,129,535
2011-2012	81,934,487	37,257,673	131,151,284	322,302,417	48,788,680	22,397,916	17,283,232	661,115,688
2012-2013	84,922,420	38,695,819	136,888,219	329,742,167	49,579,441	24,053,900	17,972,359	681,854,326
2013-2014	88,021,986	40,189,478	142,885,347	337,377,351	50,383,019	25,832,318	18,688,963	703,378,462
2014-2015	91,237,413	41,740,792	149,154,879	345,213,683	51,199,622	27,742,223	19,434,140	725,722,753
2015-2016	94,573,098	43,351,986	155,709,618	353,257,060	52,029,460	29,793,337	20,209,030	748,923,586
2016-2017	98,033,594	45,025,373	162,562,990	361,513,562	52,872,747	31,996,099	21,014,816	773,019,180
2017-2018	101,623,641	46,763,352	169,729,072	369,989,462	53,729,703	34,361,721	21,852,731	798,049,682
2018-2019	105,348,153	48,568,418	177,222,629	378,691,230	54,600,546	36,902,245	22,724,055	824,057,277
2019-2020	109,212,233	50,443,158	185,059,142	387,625,542	55,485,507	39,630,603	23,630,122	851,086,307
2020-2021	113,221,179	52,390,264	193,254,852	396,799,284	56,384,810	42,560,680	24,572,316	879,183,386
Total	1,645,018,006	748,929,136	2,649,163,302	6,418,668,756	972,126,052	469,762,776	347,653,222	13,251,321,251

Table 29

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (2%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44,028,262	18,758,846	46,016,623	118,918,800	21,257,600	5,314,400	5,845,840	260,140,371
2001-2002	45,919,602	19,595,821	52,014,046	126,182,965	21,787,781	5,756,365	6,131,169	277,387,749
2002-2003	47,534,643	20,548,235	54,762,091	139,601,962	22,384,787	6,250,052	6,445,856	297,527,628
2003-2004	49,460,327	21,369,931	57,651,516	144,289,157	22,995,075	6,785,171	6,775,794	309,366,971
2004-2005	51,503,058	22,283,076	60,689,444	149,123,818	23,618,845	7,365,122	7,121,666	321,685,029
2005-2006	53,605,817	23,171,495	63,883,352	154,110,327	24,256,302	7,993,578	7,484,195	334,505,066
2006-2007	55,791,701	24,116,598	67,241,094	159,253,198	24,907,648	8,674,504	7,864,132	347,848,875
2007-2008	58,063,926	25,099,853	70,770,914	164,557,077	25,573,090	9,412,186	8,262,260	361,739,305
2008-2009	60,425,832	26,122,787	74,461,470	170,026,750	26,252,833	10,211,246	8,679,393	376,200,310
2009-2010	62,880,886	27,186,986	78,381,852	175,667,144	26,947,085	11,076,682	9,116,383	391,257,017
2010-2011	65,432,689	28,294,099	82,481,608	181,483,336	27,656,056	12,013,885	9,574,114	406,935,786
2011-2012	68,084,979	29,445,843	86,790,762	187,480,554	28,379,957	13,028,676	10,053,508	423,264,279
2012-2013	70,841,641	30,643,909	91,319,842	193,664,185	29,119,000	14,127,337	10,555,527	440,271,531
2013-2014	73,706,705	31,890,422	96,079,904	200,039,779	29,873,399	15,316,651	11,081,171	457,988,031
2014-2015	76,684,358	33,187,040	101,082,560	206,613,053	30,643,369	16,603,935	11,631,483	476,445,797
2015-2016	79,778,948	34,535,654	106,340,005	213,389,900	31,429,127	17,997,084	12,207,549	495,678,467
2016-2017	82,994,990	35,938,949	111,865,048	220,376,389	32,230,894	19,504,620	12,810,499	515,721,389
2017-2018	86,337,171	37,398,490	117,671,142	227,578,780	33,048,888	21,135,733	13,441,512	536,611,717
2018-2019	89,810,361	38,916,729	123,772,418	235,003,521	33,883,333	22,900,339	14,101,813	558,388,515
2019-2020	93,419,614	40,496,005	130,183,722	242,657,261	34,734,453	24,809,133	14,792,680	581,092,868
2020-2021	97,170,180	42,138,752	136,920,646	250,546,851	35,602,475	26,873,648	15,515,442	604,767,995
Total	1,369,467,427	592,380,964	1,764,383,435	3,741,546,007	565,324,395	277,835,947	203,646,149	8,514,584,324

Table 30

Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (3%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,824	240,592,000	41,133,778	10,873,413	11,577,628	473,078,198
2002-2003	58,866,966	26,238,995	88,613,929	263,278,000	41,389,132	11,568,601	11,923,667	501,879,311
2003-2004	60,407,289	26,989,430	91,550,784	266,556,305	41,646,072	12,308,237	12,279,678	511,737,966
2004-2005	61,990,063	27,761,328	94,591,098	269,893,914	41,904,606	13,095,160	12,646,710	521,882,876
2005-2006	63,610,482	28,555,302	97,736,721	273,292,133	42,164,745	13,932,396	13,024,590	532,324,276
2006-2007	65,287,776	29,371,983	100,997,651	276,752,302	42,426,499	14,823,180	13,413,575	543,072,949
2007-2008	67,005,216	30,212,022	104,372,046	280,275,791	42,689,878	15,770,674	13,814,273	554,140,100
2008-2009	68,770,057	31,076,066	107,866,223	283,864,004	42,954,892	16,779,181	14,226,941	565,537,423
2009-2010	70,583,759	31,964,862	111,484,672	287,518,376	43,221,551	17,851,953	14,651,937	577,277,109
2010-2011	72,447,578	32,879,057	115,232,058	291,240,378	43,489,866	18,993,312	15,089,628	589,371,877
2011-2012	74,362,969	33,819,398	119,113,231	295,031,516	43,759,846	20,207,645	15,540,394	601,834,998
2012-2013	76,331,380	34,786,633	123,133,232	298,893,329	44,031,502	21,499,615	16,004,625	614,680,321
2013-2014	78,354,333	35,781,530	127,297,300	302,827,395	44,304,845	22,874,166	16,482,725	627,922,315
2014-2015	80,433,343	36,804,882	131,610,886	306,835,328	44,579,884	24,336,641	16,975,106	641,576,071
2015-2016	82,570,001	37,857,502	136,079,653	310,918,783	44,856,631	25,892,598	17,482,196	655,657,363
2016-2017	84,765,935	38,940,226	140,709,491	315,079,460	45,135,096	27,548,033	18,004,435	670,182,986
2017-2018	87,022,822	40,053,917	145,506,524	319,319,062	45,415,290	29,309,309	18,542,273	685,169,197
2018-2019	89,342,382	41,199,459	150,477,124	323,639,393	45,697,223	31,183,192	19,096,179	700,634,951
2019-2020	91,726,389	42,377,763	155,627,912	328,042,258	45,980,906	33,176,880	19,666,631	716,598,746
2020-2021	94,176,683	43,589,767	160,965,778	332,529,517	46,266,350	35,298,035	20,254,124	733,080,236
Total	1,485,481,905	875,964,010	2,388,745,141	5,896,379,233	873,048,590	417,322,421	310,097,645	12,017,638,944

Table 31

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (3%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44,028,262	18,758,846	46,016,623	118,918,800	21,257,600	5,314,400	5,845,840	260,140,371
2001-2002	45,919,602	19,595,821	52,014,046	126,182,965	21,573,378	5,702,764	6,072,208	277,060,784
2002-2003	47,075,447	20,346,879	54,237,289	139,601,962	21,946,399	6,134,198	6,322,481	295,666,655
2003-2004	48,529,427	20,978,457	56,551,891	142,877,949	22,322,883	6,597,389	6,582,188	304,440,185
2004-2005	50,025,827	21,624,573	58,961,496	146,221,293	22,702,793	7,094,607	6,851,649	313,482,238
2005-2006	51,565,845	22,290,234	61,469,895	149,633,221	23,086,089	7,628,281	7,131,189	322,804,755
2006-2007	53,150,708	22,976,021	64,081,030	153,114,990	23,472,733	8,201,008	7,421,147	332,417,636
2007-2008	54,781,681	23,682,534	66,798,999	156,667,881	23,862,684	8,815,565	7,721,869	342,331,212
2008-2009	56,460,064	24,410,389	69,628,065	160,293,204	24,255,901	9,474,920	8,033,713	352,556,256
2009-2010	58,187,195	25,160,221	72,572,662	163,992,299	24,652,343	10,182,246	8,357,048	363,104,012
2010-2011	59,964,447	25,932,684	75,637,401	167,766,532	25,051,966	10,940,935	8,692,251	373,986,217
2011-2012	61,793,234	26,728,451	78,827,080	171,617,304	25,454,727	11,754,614	9,039,714	385,215,123
2012-2013	63,675,010	27,548,214	82,146,687	175,546,044	25,860,584	12,627,155	9,399,837	396,803,531
2013-2014	65,611,270	28,392,686	85,601,415	179,554,214	26,269,491	13,562,698	9,773,035	408,764,810
2014-2015	67,603,551	29,262,601	89,196,663	183,643,312	26,681,405	14,565,668	10,159,732	421,112,932
2015-2016	69,653,436	30,158,714	92,938,052	187,814,867	27,096,279	15,640,788	10,560,367	433,862,503
2016-2017	71,762,548	31,081,803	96,831,426	192,070,447	27,514,070	16,793,106	10,975,390	447,028,792
2017-2018	73,932,562	32,032,667	100,882,871	196,411,655	27,934,731	18,028,018	11,405,265	460,627,770
2018-2019	76,165,196	33,012,131	105,098,718	200,840,133	28,358,217	19,351,280	11,850,471	474,676,145
2019-2020	78,462,219	34,021,043	109,485,555	205,357,561	28,784,483	20,769,041	12,311,497	489,191,398
2020-2021	80,825,450	35,060,274	114,050,240	209,965,660	29,213,481	22,287,872	12,788,851	504,191,827
Total	1,235,144,717	534,298,397	1,587,011,481	3,409,173,492	506,094,638	246,152,155	181,449,901	7,699,324,781

Table 32

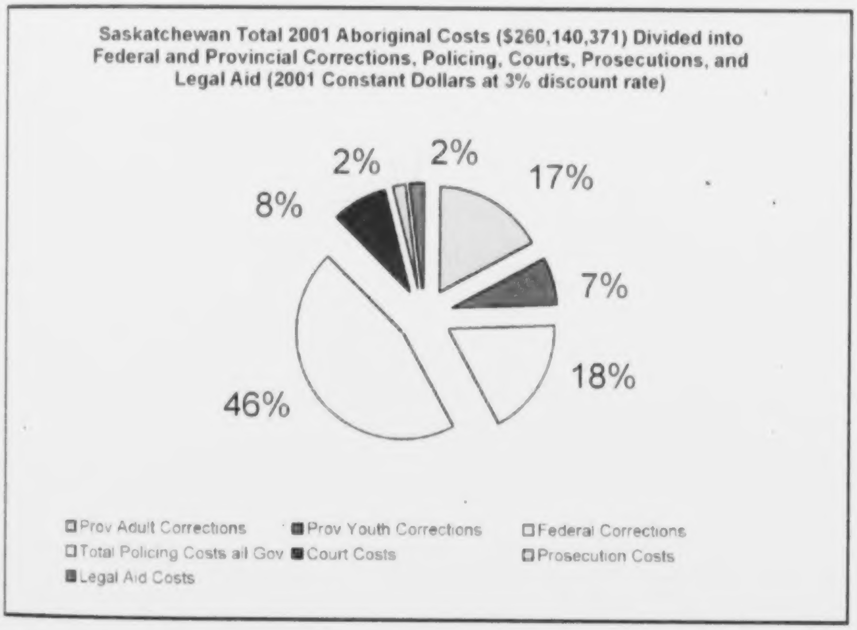
Total Cost - Total Saskatchewan Population - based on constant 2001 dollars (4%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	55,025,709	24,571,628	75,803,972	228,690,000	40,880,000	10,220,000	11,242,000	446,433,309
2001-2002	57,420,450	25,703,870	85,776,829	240,592,000	40,724,978	10,771,213	11,465,408	472,454,748
2002-2003	58,292,762	25,981,956	87,756,161	263,278,000	40,570,545	11,352,155	11,693,255	498,924,833
2003-2004	59,235,152	26,465,220	89,787,083	263,923,525	40,416,697	11,964,430	11,925,630	503,717,738
2004-2005	60,194,902	26,957,473	91,871,073	264,589,115	40,263,432	12,609,729	12,162,623	508,648,347
2005-2006	61,172,334	27,458,682	94,009,654	265,275,019	40,110,749	13,289,831	12,404,325	513,720,796
2006-2007	62,167,778	27,969,618	96,204,395	265,981,489	39,958,644	14,006,614	12,650,831	518,939,370
2007-2008	63,181,568	28,489,853	98,456,917	266,708,782	39,807,117	14,762,057	12,902,236	524,308,529
2008-2009	64,214,045	29,019,764	100,768,887	267,457,159	39,656,164	15,558,244	13,158,637	529,832,899
2009-2010	65,265,556	29,559,531	103,142,028	268,226,884	39,505,783	16,397,374	13,420,133	535,517,289
2010-2011	66,336,456	30,109,339	105,578,115	269,018,224	39,355,973	17,281,762	13,686,825	541,366,694
2011-2012	67,427,105	30,669,372	108,078,979	269,831,453	39,206,730	18,213,849	13,958,818	547,386,306
2012-2013	68,537,870	31,239,823	110,646,509	270,666,846	39,058,054	19,196,208	14,236,216	553,581,524
2013-2014	69,669,125	31,820,883	113,282,652	271,524,683	38,909,942	20,231,550	14,519,126	559,957,960
2014-2015	70,821,250	32,412,752	115,989,419	272,405,240	38,762,391	21,322,733	14,807,658	566,521,452
2015-2016	71,994,635	33,015,629	118,768,883	273,308,833	38,615,400	22,472,768	15,101,925	573,278,072
2016-2017	73,189,674	33,629,720	121,623,182	274,235,726	38,468,966	23,684,831	15,402,039	580,234,137
2017-2018	74,406,770	34,255,232	124,554,524	275,186,227	38,323,087	24,962,265	15,708,117	587,396,223
2018-2019	75,646,333	34,892,380	127,565,184	276,160,636	38,177,762	26,308,598	16,020,278	594,771,171
2019-2020	76,908,781	35,541,378	130,657,514	277,159,261	38,032,987	27,727,545	16,338,642	602,366,108
2020-2021	78,194,538	36,202,448	133,833,937	278,182,410	37,888,762	29,223,022	16,663,333	610,188,450
Total	1,344,277,084	611,395,123	2,158,351,925	5,373,711,521	785,814,161	371,336,778	278,226,053	10,923,112,646

Table 33

Aboriginal Proportion of Total Cost - based on constant 2001 dollars (4%)

	Prov Adult Corrections	Prov Youth Corrections	Federal Corrections	Total Policing Costs all Gov	Court Costs	Prosecution Costs	Legal Aid Costs	Total
2000-2001	44 028 262	18 758 846	46 016 523	118 918 600	21 257 600	5 314 400	5 845 840	260 140 371
2001-2002	45 919 602	19 595 821	52 014 046	126 182 965	21 358 975	5 649 164	6 013 247	276 733 820
2002-2003	46 816 251	20 149 522	53 712 488	139 601 962	21 512 347	6 019 429	6 200 295	293 812 293
2003-2004	47 587 752	20 570 980	55 462 855	141 466 742	21 663 921	6 413 104	6 392 306	299 557 660
2004-2005	48 577 118	20 998 397	57 266 965	143 347 295	21 813 649	6 831 613	6 589 383	305 424 121
2005-2006	49 584 659	21 434 352	59 125 482	145 243 682	21 961 483	7 276 463	6 791 630	311 417 752
2006-2007	50 610 691	21 879 012	61 040 915	147 155 968	22 107 377	7 749 249	6 999 154	317 542 366
2007-2008	51 655 536	22 332 545	63 014 624	149 084 227	22 251 285	8 251 659	7 212 061	323 801 936
2008-2009	52 719 521	22 795 121	65 048 321	151 028 536	22 393 165	8 785 478	7 430 460	330 200 602
2009-2010	53 802 983	23 266 915	67 143 767	152 988 981	22 532 974	9 352 595	7 654 462	336 742 677
2010-2011	54 906 262	23 748 106	69 302 780	154 965 650	22 670 672	9 955 011	7 884 179	343 432 660
2011-2012	56 029 705	24 238 875	71 527 233	156 958 644	22 806 219	10 594 840	8 119 725	350 275 241
2012-2013	57 173 669	24 739 406	73 819 058	158 968 065	22 939 578	11 274 318	8 361 215	357 275 308
2013-2014	58 338 514	25 249 888	76 180 247	160 994 025	23 070 713	11 995 810	8 608 766	364 437 963
2014-2015	59 524 608	25 770 513	78 612 853	163 036 644	23 199 590	12 761 820	8 862 498	371 768 525
2015-2016	60 732 329	26 301 475	81 118 994	165 096 047	23 326 176	13 574 992	9 122 530	379 272 544
2016-2017	61 962 059	26 842 975	83 700 857	167 172 371	23 450 439	14 438 124	9 388 986	386 955 810
2017-2018	63 214 188	27 395 214	86 360 695	169 265 756	23 572 351	15 354 172	9 661 989	394 824 365
2018-2019	64 489 116	27 958 400	89 100 834	171 376 353	23 691 883	16 326 265	9 941 666	402 884 517
2019-2020	65 787 247	28 532 743	91 923 674	173 504 322	23 809 010	17 357 706	10 228 145	411 142 847
2020-2021	67 108 996	29 118 458	94 831 691	175 649 830	23 923 707	18 451 990	10 521 559	419 606 227
Total	1 116 340 807	482 918 718	1 430 308 078	3 113 088 064	454 055 516	218 413 800	161 984 251	6 977 109 234



Saskatchewan Total 2001 Aboriginal Costs ($260,140,371) Divided into Federal and Provincial Corrections, Policing, Courts, Prosecutions, and Legal Aid (2001 Constant Dollars at 3% discount rate)

Figure 44

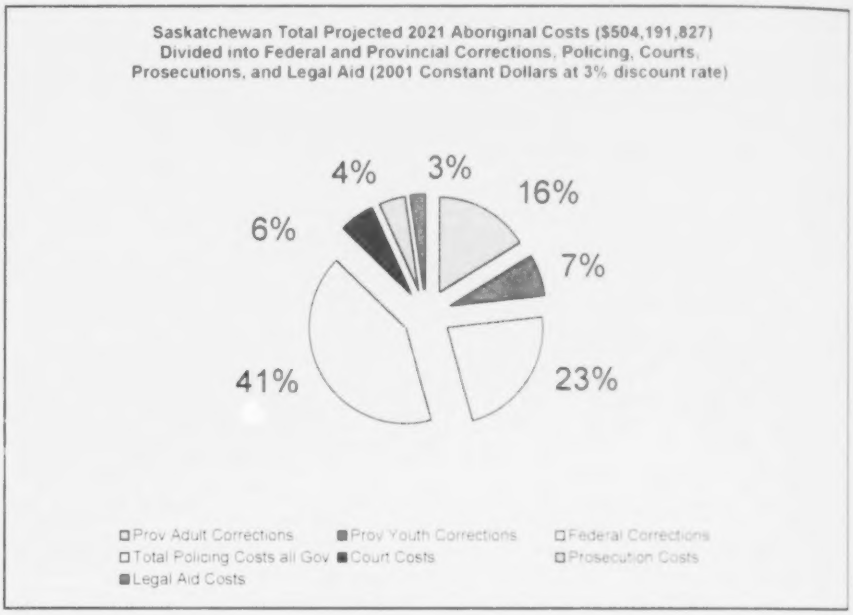


Figure 45

6.0 MEASURING ALTERNATIVES: COSTS AND BENEFITS

6.1 Fetal Alcohol Spectrum Disorders and Abilities

> **The old man said, to have been born imperfect was a sign of specialness [. . .]. The old man explained carefully that in the old days, if a child came with a hare-shorn lip, it wasn't a terrible thing or a hurtful thing; it meant the child's soul was still in touch with the Spirit World.** (Johnson, *Journal 9*, Spring 1994; Wiebe & Johnson, 1998)

- 31 per cent of Aboriginal peoples report a disability (NAND, 1994).

- 16 per cent of the general population report a disability (Canada, 1995)

- 75 per cent of children in custody have some disability (Green & Healy 2003).

- visual disability (related to high rates of Type II diabetes) among Aboriginal peoples is 2 to 3 times the national average (Durst & Bluechardt, 2004).

- hearing disabilities (ear infections associated with "permanent but preventable hearing loss") among Aboriginal peoples 1.5 times national average (Durst & Bluechardt, 2004).

One of the exhorbitant costs of educational, legal, and other institutions that disadvantage Aboriginal youth is early sexual activity promoted by drug and alcohol abuse and a desperate need to belong. That activity in turn contributes to the tragic incidences of Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE), or Fetal Alcohol Spectrum Disorder (FASD), while the federal FAS/FAE Initiative focused exclusively on-reserve leaves urban Aboriginal people to compete for inadequate resources. And high rates of HIV/AIDS among Aboriginal people (26 per cent of whom are under 30 years of age) add to the costs (Chalifoux & Johnson, 2003).

Worldwide the incidence of FAS is 1.9 cases per thousand (Boland, Burrill, Duwyn, & Karp, 1998) and it is a global and not a specifically Aboriginal issue. Though much research remains to be done and there is no national data in Canada, Boland, Burrill, Duwyn, & Karp (1998) have underlined, from a corrections perspective, the need for pre-sentence screening, identifying specific learning problems and behaviours, developing a centralized data base for research and risk management, designing awareness manuals and in-service training, appointing advocates where numbers warrant, and developing programs specific to needs and behaviours.

In 30 May and 2 October 2003 decisions, Judge Mary Ellen Turpel-Lafond struggled to reconcile the objectives of the *Youth Criminal Justice Act (YCJA)* to pursue alternatives to incarceration and respond to special needs, while faced with major gaps in provincial correctional, educational, and child welfare services that remain inadequately coordinated, though studies and reviews are in process. Such gaps in service left a teenage offender undiagnosed with FASD until Judge Turpel-Lafond's own order — and untreated. Instead, for convenience and grocery store robberies, he had served over a year in closed custody, while rehabilitative sentences "exist only in theory," according to Turpel-Lafond (Adam, 2003).

The case underlines all too starkly the barriers to change in gaps between theory and practice, in persistent investment in sentencing and warehousing offenders in jails and underinvestment in services to meet the objectives of new legislation and to address the root causes of offending behaviour. Professor Tim Quigley similarly stresses, "for some reason, we have almost unlimited resources when it comes to custody and yet very little in the community; StatsCan shows Saskatchewan is spending 85 per cent of its corrections budget on custody facilities and only 13 per cent on community services" (Adam, 2003).

When judges unpack systemic discrimination and search for reasons that Aboriginal youth come into conflict with the law, it becomes ever clearer that the solutions reside in the education, health, and social support systems. Judge Turpel-Lafond's decisions on the Aboriginal youth in *R. v. B.L.M.* [2003] meant grappling with a youth with fetal alcohol syndrome who had accumulated a record and for whom custodial sentences seemed to have had little impact on his behaviour. Judge Turpel-Lafond noted that ending the cycle of offending and protecting public safety required a community-based disposition where the youth could be supported, especially in light of his neurological impairment caused by prenatal alcohol consumption. However, in searching for community supports, Judge Turpel-Lafond noted that even in the context of the most progressive legislation, adopting principles of rehabilitation and alternatives to custody, Aboriginal youth continue to face incarceration:

> **As this Court noted in the first judgment, judges can only implement the principles and procedures designated in legislation when community and institutional resources have been provided to support rehabilitation, special needs and so forth. It has consistently been the case with FASD youth, and M.(B.) is simply another in the assembly line who appear in the Youth Court, that there are no specific resources, supports, or trained individuals who can assist them with shelter, food, life skills, education, addictions and so forth. (at para. 29)**

Judge Turpel-Lafond attempted to find supports and to search for assistance in finding a pathway out of recidivism for this youth. Her judgment situated this youth's circumstances in the context of many that she sees as an Aboriginal judge in the Provincial Court of Saskatchewan. However, upon appeal, the Saskatchewan Court of Appeal, did not share the Judge's concern regarding custody where there are few supports. They sent the youth to jail for a long period of time on the following basis:

> **We share the sentencing judge's concerns about FASD and its impact on youth and adults in trying to avoid criminal associations. We also regret the lack of more extensive programming which will assist FASD-designated youth in overcoming their difficulties, but, where custody is otherwise lawful, to sentence a youth to probation when there is no effective support does not protect the public and is not a fit sentence.** (2003 SKCA 135, para. 67, Justice Jackson)

From the above, it seems evident that, even when faced with an appalling lack of resources to implement useful youth-related legislation and a need to protect the public, the Court of Appeal will repeatedly take the route of custody — regardless of how that may contribute, as the literature demonstrates, to excessive rates of recidivism, while showing no demonstrable benefits for public safety (Schiraldi & Ziedenberg, 2003). We know too from the literature that youth with FASD do not transfer knowledge learned in institutions into the community, and that they have diminished cognitive skills, so of what value, other than warehousing them for increasingly longer periods of time, is custody?

In order to address the situation for Aboriginal people in the criminal justice system, it is clear from Judge Turpel-Lafond's analysis that "root causes" need to be tackled to reduce excessive recidivism. Without an investment at this level, we will face ever more crippling present and future costs of custody.

Mitten (2003) likewise argues for holistic community-based treatment as preferable to incarceration as a sentencing option, especially when the disability (itself linked to colonization, residential schools, and poverty) means that any learning in the institutional setting is not readily transferred to the outside world—and because high recidivism is a necessary consequence and perpetuates the disproportionate incarceration of Aboriginal peoples. And such holistic treatment is less costly than the $46,000 per year to keep a youth in corrections or the $16,000 per year for foster care; prenatal intervention programs, by contrast, cost $3,400 per woman (Mitten, 2003).

The situation of youth with Fetal Alcohol Spectrum Disorders is part of a larger "public policy vacuum" in Saskatchewan facing Aboriginal peoples with disabilities (approximately 29 per cent of the Aboriginal population) caught in jurisdictional complexities and contradictions that often cause them to give up on services. People already marginalized by disabilities are further marginalized by their gender (in the case of women) or their location off-reserve (Durst & Bluechardt, 2004). Compounding the problems are failures of service and voluntary organizations to build relationships with Aboriginal persons, keep records, or communicate effectively, making critical the participation of two First Nations women who are quadriplegic in gathering and analysing data in the study by Durst & Bluechardt (2001) of this "hidden population"—despite rates of disability among Aboriginal peoples double the national average. That professionals understand "'disability' as a 'health' issue rather than an economic, social or recreational one" means that "First Nations or Aboriginal identity is second to the health or physical needs of the person. The cultural context is lost in the attention to the concreteness of the physical disability." Even when people had not visited the home reserve for years, the reserve "remains a first point of identity and recognition among First Nations people." The communications barriers add to difficulties and are registered in "them and us" attitudes that further alienate professionals and clients (Durst & Bluechardt, 2004).

And research in the U.S. too emphasizes similar fates for the high rates of people with mental illnesses in the justice system (Fellner & Abramsky, 2003):

- 1 in 6 prisoners is mentally ill.
- 3 times as many people with mental illness in prisons as in mental health hospitals.
- rate of mental illness in prison population is 3 times higher than in general population.
- many poor people with mental illness cannot access treatment.
- mentally ill prisoners are harassed or physically or sexually abused.

6.2 Education and Labour Force Participation

> **The "urban Aboriginal fact" has a significant impact on cities—perhaps most visibly in Western Canada. In many Western cities positive futures for urban areas are intricately tied to positive futures for Aboriginal People.** (Graham & Peters, 2002)

> **So often reports go unnoticed after their release—we do not want this report to become a dust collector on your bookshelf! . . . . Please listen to the voices of the youth in this report. . . .** *Blueprints for Change* **is proof that Saskatchewan youth are articulate and knowledgeable. I hope this report inspired you to begin working toward change in Saskatchewan's secondary school system.** (A. Ducette; PYD, 2003)

Drost (1995) finds that disparities in employment rates between Aboriginal and non-Aboriginal people are associated with Aboriginal peoples concentrated in urban centres and especially in poor neighbourhoods in Western cities with limited opportunities for labour market activity. But Graham & Peters (2002) caution against reading correlation as causality, insisting that residential concentrations may result from rather than cause poverty. Equally, they caution against expectations that Aboriginal peoples will adjust to urban living and end patterns of mobility and migration. Instead, they argue that ties to land remain critical to identities and rates of migration are not invariant, but reflect the social and economic circumstances of different centres and provincial and regional policy and economic environment: "Mobility and return migration may represent, then, not an inability to adjust, but an attempt to adapt to economic realities and to maintain vital and purposeful community relationships." And Newhouse (2000) importantly emphasizes that cultural identities and traditions are not inconsistent with urbanization or modernization and that Western institutions and practices are being reconfigured to support Aboriginal cultures, identities, and aspirations.

Urban Aboriginal youth are frequent casualties of jurisdictional gaps that leave them without access to life opportunities. The Department of Indian Affairs and Northern Development's Post-Secondary Student Support Program (PSSSP) limiting eligibility to Status Indians and Inuit, is one major obstacle. Chalifoux & Johnson (2003) insist that another generation of these youth cannot be sacrificed to "narrow policy thinking. It is a matter of entitlement and basic common sense not to fail this generation of Aboriginal youth. Yet, in higher education, this is what we are doing." And in the process we contribute to the growing disparity in social health indicators between the Aboriginal and non-Aboriginal populations that threatens to erode capacities for community identification and collective action and hence the formation of social capital (Putnam, 2000; Bourdieu, 1986).

This growing disparity is especially remarkable in the light of increased levels of formal mainstream education supplementing traditional knowledge in Aboriginal communities. According to Census Canada (2001), educational attainment showed striking improvements in those aged 25 to 64 between 1996 and 2001:

- from 21 to 23 per cent high school diplomas.
- from 33 to 38 per cent post-secondary certificate (53.4 per cent non-Aboriginal).
- from 14 to 16 per cent for trade certificates (higher than non-Aboriginal at 13 per cent).
- from 13 to 15 per cent college diploma (18 per cent non-Aboriginal).
- from 6 to 8 per cent university degrees.
- from 45 per cent to 39 per cent less than high school.
- 31 per cent of 20-24 year-olds attending school and 19 per cent of 25-29 year-olds.

Population aged 25 to 64 reporting Aboriginal identity, by level of educational attainment and sex, Canada, 1996 and 2001

Both Sexes	**1996 Number (%)**	**2001 Number (%)**	**Growth 1996-2001 Number (%)**
Less than high school	156,605 (45.2)	171,725 (38.7)	15,120 (9.7)
High school	74,105 (21.4)	101,365 (22.9)	27,260 (36.8)
Trades	48,845 (14.1)	69,265 (15.6)	20,420 (41.8)
College	45,755 (13.2)	66,805 (15.1)	21,050 (46.0)
University	21,180 (6.1)	34,465 (7.8)	13,285 (62.7)
All trades, college and university	115,780 (33.4)	170,535 (38.4)	54,755 (47.3)
Population 25 to 64	346,490 (100.0)	443,625 (100.0)	97,135 (28.0)
Men			
Less than high school	77,180 (47.3)	86,495 (41.3)	9,315 (12.1)
High school	32,490 (19.9)	45,770 (21.8)	13,280 (40.9)
Trades	29,360 (18.0)	41,340 (19.7)	11,980 (40.8)
College	16,175 (9.9)	23,580 (11.2)	7,405 (45.8)
University	8,045 (4.9)	12,440 (5.9)	4,395 (54.6)
All trades, college and university	53,580 (32.8)	77,360 (36.9)	23,780 (44.4)
Population 25 to 64	163,250 (100.0)	209,625 (100.0)	46,375 (28.4)
Women			
Less than high school	79,415 (43.3)	85,225 (36.4)	5,810 (7.3)
High school	41,610 (22.7)	55,575 (23.8)	13,965 (33.6)
Trades	19,480 (10.6)	27,940 (11.9)	8,460 (43.4)
College	29,585 (16.1)	43,225 (18.5)	13,640 (46.1)
University	13,135 (7.2)	22,015 (9.4)	8,880 (67.6)
All trades, college and university	62,200 (33.9)	93,180 (39.8)	30,980 (49.8)
Population 25 to 64	183,225 (100.0)	233,980 (100.0)	50,755 (27.7)

Source: Statistics Canada. (2003c). 2001 Census: analysis series. Education in Canada: Raising the standard.

And unemployment rates correlate with educational attainment: those without high school certificates recording an unemployment rate of 40 per cent; those with secondary (23 per cent); college (20 per cent); and university (9 per cent). Young urban Aboriginal people represent not a problem but an invaluable resource in the context of the global knowledge economy, an aging population, and skilled labour shortages. And they need to become significant players in "senior levels of industry and government" (Chalifoux & Johnson, 2003) as well as in educational and other influential institutions. Howe (2002) has demonstrated that Aboriginal people experience the highest average rate of return on investment in education.

The return on investment can be increased if Aboriginal youth gain meaningful access to educational opportunities in institutions that decolonize their own thinking (Battiste, Bell, & Findlay, 2002) and distance themselves from assimilationist residential schools designed "to kill the Indian in the child." Residential school experience is not isolated in the past, but is still felt keenly by people struggling with "their identity after years of being taught to hate themselves and their culture" and repeating patterns of abuse learned in the residential school system (RCAP, 1996b). Only by decolonizing coercive and culturally specific standards and values to appreciate the literacies, knowledges, skills, and talents that all students bring (instead of labelling some as deficient and needy) will educational institutions truly represent Plains Cree Elders' hope and challenge that "Education is now our buffalo." Only then will they reduce the approximately seventy per cent drop out rate of First Nations youth from school so closely associated with risk factors, including early pregnancies—those under 15 years of age 18 times more likely to experience early pregnancy than the general teen population and with costly medical outcomes, including FAS and FAE (Chalifoux & Johnson, 2003).

We can all gain by recovering from what Battiste (2000) calls "cognitive imperialism," even if we have not all been affected by it to the same extent or in the same ways. We have much to gain from "unfolding the lessons of colonization," learning from diverse perspectives, and seeing "The many sides of our confinement, our box" (Battiste, 2000). Decolonizing education will benefit us all by bringing together knowledges that were separated, classified, even discarded, or invested in territorial disputes over what knowledge and disciplines were central or not. Instead, different disciplines and knowledge systems could work productively for the common good and give real meaning to the Saskatchewan motto (translated from the Latin phrase *Multis E Gentibus Vires*): "From many peoples, strength." This motto was developed in 1985 to celebrate Saskatchewan Heritage Year and proclaimed in 1986.

Again and again the Standing Senate Committee on Aboriginal peoples heard that youth want to be a source of strength, want an active voice in decision making:

> **Aboriginal youth want to be included in the debate, not as subjects but as full and equal partnered participants. We do not want you to tell us what we should do. We want you and our own leaders to work with us to find out what exactly we can do, how far we can go, how high we can reach, what**

> **walls we can knock down, what barriers we can stretch, what vistas we can surpass, and what wonders we can accomplish.** (Chalifoux & Johnson, 2003)

And models of partnerships with community are available in, for example, the National Aboriginal Youth Strategy (NAYS), an initiative bringing together Federal, Provincial, and Territorial leaders as well as Aboriginal leaders and involving Aboriginal youth. Such an initiative could be replicated at local levels without undue barriers and burdens if training and long-term resources are provided and if holistic community rather than individual and uncoordinated approaches prevail (Chalifoux & Johnson, 2003). And Graham & Peters (2002) commend federal initiatives like Supporting Community Partnership's Initiative and the National Homelessness Initiative. They commend too the Urban Aboriginal Strategy and the Prime Minister's Task Force on Urban Issues (Canada, Sgro Report, 2002) that depend on co-operation across jurisdictions and involve First Nations, Metis, and non-Status players—while challenging the federal government to target racism, recognize the diversity of urban Aboriginal peoples, and address the arbitrary categories of identity that retard real progress, serve as barriers to access, and affect women and children disproportionately.

6.3 Alternative Interventions: Benefit-Cost Comparisons

> **Former prisoners are often punished for life through a variety of consequences that affect the 13 million people who have felony convictions in [the U.S.] . . . prison time can hobble people's chances of staying in the labor market and earning good wages.** (Schiraldi & Ziedenberg, 2003)

> **From an investment perspective, both our prison and parole/probation systems are business failures. . . . The 'coercive mobility" of cyclical imprisonment disrupts the fragile economic, social, and political bonds that are the basis for informal social control in a community.** (Tucker & Cadora, 2003)

Counting the Costs

If research is increasingly showing the costs and failures of punitive sentencing and lengthy periods of incarceration, the result has been to turn attention to alternative interventions, their benefits and costs. Still, as then Justice Minister Anne McLellan makes clear, public policy (as well as judicial decision-making) often fails to attend to research findings. We continue to imprison youth at enormous expense to communities, even when we know that incarceration hardens criminality, while alternative measures "can do a better job of ensuring that youth learn from their mistakes" (qtd. in Green & Healy, 2003).

Tough on crime policies have produced crises involving seriously deficient and deteriorating infrastructure, budgets spiraling out of control, and criminality reproducing rather than reducing. But crises have also brought some unlikely

constituencies (fiscal conservatives and liberal reformers) together to rethink alternatives to incarceration, harm reduction, and crime prevention at their roots. Alternative measures have become ever more necessary in the case of offenders being released without any or adequate preparation or programming into a social world where they face few options.

In some cases ex-prisoners find return to a "normal life" impossible, even illegal. In some US states, they find themselves facing further punishment in the form of laws prohibiting:

- collecting welfare.
- accessing public housing.
- receiving food assistance.
- getting drivers' licenses.
- voting in elections (48 of 50 states).
- applying for student loans.
- gaining employment with agencies or companies supported by grants. (Saunders, 2004)

The consequences for local communities and state legislatures are becoming clear as the products of the "war on crime"—"a flood of tough, desperate and often unemployable people"—are "threatening to create a permanent criminal community." In the State of the Union address, President George W. Bush promised $300-million for "a four-year 'prison re-entry initiative' that would provide job training, housing and mentoring to released inmates." To turn a potentially explosive situation around, experts anticipate much greater spending will be needed to address the products of earlier justice decisions that greatly expanded the prison system but released prisoners with "$20 and a bus ticket" (Saunders, 2004).

With the help of Canadian consultants, Fort Wayne, Indiana, in 2000 established programming (ReEntry Court) to help ex-prisoners find work and housing and get training and treatment. In its first three years, only 19 per cent of participants have re-offended and been arrested. Without the program, 63 per cent of offenders re-offended and returned to prison (Saunders, 2004).

New Jersey, home of the highest proportion of drug offenders in the U. S. prison population, offers a useful case study on the excessive costs of and low returns on high rates of incarceration, the disproportionate impact on youth, women, and African Americans, Latinos, and other non-white communities, as well as the benefits and costs of alternative interventions proposed in the *Preliminary Strategic Planning Document* by the New Jersey Department of Corrections and assessed by Schiraldi & Ziedenberg (2003). Between 1986 and 1999, for instance, drug offenders entering prison increased by 475 per cent for African Americans and 112 per cent for whites, but 446 per cent for youth, and 700 per cent for African American youth. And the result of mandatory minimum sentences and "drug free school zone" legislation targeting poor urban centres and not suburbia has been to concentrate drug users in prison and aggravate racial disparities. The budgetary consequences include:

- one of every 14 general dollars in state spending on prisons.
- corrections cost increases of 946 per cent between 1977 and 1999.
- prison costs 2.5 times education spending.
- resources that "educate, enrich and build communities" shifted to "employment that arrests, detains, and incarcerates."
- Police and correctional employment increases of 494 per cent, higher education 201 per cent, and public welfare employment 241 per cent between 1980 and 2000. (Schiraldi & Ziedenberg, 2003)

In other words, the state had "to choose between classrooms and cellblocks," while removing "resources, treatment dollars and people from communities, and concentrat[ing] spending in prisons far from offenders' communities;" re-incarcerating parole violators without demonstrable benefits for public safety (203,000 in 2000) or reduced drug use (increased by 33 per cent; prison admission by 29 per cent), and further distorting the economic landscape. And the findings in New Jersey have been confirmed in studies showing correlations between higher incarceration and increased drug use. Furthermore, the economic, emotional, and social impact on women (and their families, communities, and care provisions) of prison terms is disproportionately huge, while their crime has a small economic impact (Schiraldi & Ziedenberg, 2003).

What the New Jersey case makes clear is that all members of society have an interest in effecting change and ending the illogic of eroding public infrastructure and human resources and endangering public safety, while spending millions of dollars incarcerating people only to return them—"stigmatized, unskilled, and untrained"—to "neighborhoods weakened by their absence and burdened by their return" (Tucker & Cadora, 2003). And that the public understands as much is evident in February 2002 Hart Research poll results showing seventy-five per cent of Americans approving probation and drug treatment instead of incarceration for nonviolent offenders and "a substantial majority" supporting an end to mandatory sentencing (Schiraldi & Ziedenberg, 2003).

Reaping the benefits

In the U.S. a significant part of "justice reinvestment" involves redefining public safety. According to the Wisconsin Governor's Task Force on Sentencing and Corrections, 1998, that definition was "hidden in plain view" in the mission of the Department of Corrections not to warehouse people but "to ensure the safety and protection of the public." Drawing on this suggestion, Tucker & Cadora (2003) advocate "a geographic approach" devolving responsibilities to local government; targeting resources for education, health, childcare, job training and creation; reducing risk factors; and requiring partnerships among parole officers, individuals, community, and government. Redirected resources could be leveraged to entice further public and private investment – and all of this designed to enhance public safety, strengthen communities, and rebuild "physical infrastructure and social fabric" instead of sucking resources from them to state prisons.

In 1997 Oregon legislation allowed for the supervision of juveniles in community programs rather than state institutions, using the $50,000 per youth per year to invest in prevention programs, community service, and neighbourhood development projects – schools, parks, libraries, healthcare. A further incentive for the program was that the county was financially responsible for any youth incarcerated. The result in Deschutes County was:

- within one year youth incarceration reduced by 72 per cent.
- youth averaging 204 hours community service (4 hours for incarcerated youth).
- child advocacy centre and homeless shelter built in weeks.
- the state saving $17,000 per case. (Open Society, 2003)

And research on targeted programs shows that participating offenders are less likely to re-offend and that high-risk offender program participation is associated with a 50 per cent reduction in recidivism (Correctional Services Canada, 2000). The federal Aboriginal Pathways Strategy designed to address over-incarceration by offering "Aboriginal-specific institutional and community healing programs" is projected to enhance participation, increase respect for Elders and others, increase transfers to minimum-security and healing institutions, and reduce institutional costs in addition to reducing the gap between Aboriginal and non-Aboriginal offenders (male and female) in these areas (Green, 2002):

- time served before conditional release.
- parole grants and waivers.
- revocation orders.
- returns 5 years after warranty expiry.
- security and risk.

A cost-benefit analysis of Hollow Water's Community Holistic Circle Healing (CHCH) in Hollow Water First Nation in Manitoba aimed to identify the benefits of the ten-year program designed to redress inter-generational sexual abuse in a community where an estimated 75 per cent were victims and 35 per cent "victimizers" (Ross, 1994). Not only did the evaluation identify improvements in the health and wellness of the community—better parenting, increased safety, extended school attendance, and reduced demand for substance abuse treatment—but Hollow Water's Community Holistic Circle Healing (CHCH) resulted in a very low rate of recidivism (2 of 107 offenders) **and** saved money in the order of $3,212,732 over ten years for provincial and federal governments:

- for every $1 contributed by provincial government saved $3.75 for pre-incarceration, prison, and probation costs.
- for every federal dollar, it would have spent $2-$12 on incarceration and parole costs.
- for every $2 the government spends, the community receives between $6 and $15 worth of services and value-added benefits. (Couture, Parker, Couture, & Laboucane, 2001)

Research is clear too on the benefits of sport, art, and recreational activities in promoting health and cohesion in families and communities, reducing hopelessness and negative behaviours, nurturing talents, enhancing self-image, while bringing structure, creativity, teamwork, and problem-solving skills to youth. Yet these are often the first programs to be cut. Financial barriers need dedicated funding; a Manitoba survey indicated that 10 per cent of 1,000 children owned sporting equipment (Chalifoux & Johnson, 2003).

The case of the Offender Substance Abuse Prevention Abuse (OSAPP) is also striking in this regard. Evaluation by Adults Corrections reveals that the re-offending rate is reduced by 17 per cent, though the longer term impact is reduced because of failures to invest in supportive programming. After two or three years, offenders tend to re-offend because of "a lack of ongoing support and community programs" (SJSCPS, 2003).

Rethinking Victim Services

A similar story emerges in the case of victim services, a responsibility of the provincial administration of justice under section 92 of the *Constitution Act, 1982*. If there is increasing agreement among the public and criminal justice system stakeholders that victim services need to be central to the system and the system (begun in the province in the mid-1980s) amasses tens of thousands of **volunteer** labour and input annually, significant challenges of funding remain.

Building on meetings in 1996 between Saskatchewan Justice's Victims Services Branch with 27 Aboriginal organizations and victims of crime, Saskatchewan Justice expanded crime prevention programs for Aboriginal youth, programs to address family violence, victim services programs in northern Saskatchewan, and developed Aboriginal Resource Officer programs. In addition, in 1996 the Victims Services Branch included Elders in the definition of "counselor" for the purposes of the Victims Compensation Program covering costs of counseling, ambulances, lost wages, and uninsured dental and medical expenses.

Saskatchewan Justice is currently evaluating programming (police-affiliated and Aboriginal Resource Officer programs) and preliminary results show good success and satisfaction levels. Though more needs to be done in the north, on-reserve, and in rural Saskatchewan, the services already rely on a huge commitment of volunteer labour. In 2001-2002 alone, 320 volunteers donated 24,000 hours to support 16,000 victims of crime. Support on-reserve remains a major challenge at a time when the federal government maintains its view of its jurisdiction and refuses to commit funding in that area (SJSCPS, 2003).

Valuing Volunteerism

Volunteerism remains a critical part of the sustaining of alternative measures.

> **Volunteering and Justice**
>
> **Every year thousands of individuals offer their time and skills, volunteering in justice-related, non-profit organizations and groups. Justice sector volunteers may participate in agencies (including those in the government sector), that provide legal services, promote crime prevention and public safety, rehabilitate offenders, provide support and services for victims of crime and protect the rights of consumers. According to the 2000 National Survey of Giving, Volunteering and Participating (NSGVP), more than 118,000 people in Canada volunteered over 13.3 million hours of their time in these types of law and legal service organizations, between October 1, 1999 and September 30, 2000. The number of volunteers in justice-related organizations dropped 9 per cent since 1997, the last time the NSGVP was conducted. Of all Canadians who reported volunteering in the last year, justice-sector volunteers accounted for 2 per cent. Despite fewer volunteers, the average number of hours volunteered rose from 82 hours/year in 1997 to 108 hours/year in 2000. In addition to time, more than 676,000 Canadians gave donations totalling $17.9 million to law and legal service organizations during 2000. The average donation was about $25.**
>
> Source: Statistics Canada (2000) National Survey of Giving, Volunteering and Participating. Statistics Canada, 1997 National Survey of Giving, Volunteering and Participating.

In line with such high levels of volunteerism, the Aboriginal Corrections Policy Unit (ACPU, 2002b) promotes community capacity building as a long-term response that takes control and ownership of issues from outside "experts" and extends responsibility to community members and institutions to remake the future by developing holistic approaches for "sustainable well-being and prosperity." Part of a broader Aboriginal Healing Movement from the 1980s coincident with a cultural renaissance, initiatives mapped by ACPU (2002b) address the colonial legacies of disease and trauma, destruction of traditional economies, identities, and governance, family and community breakdown—and the particularly acute consequences for Aboriginal youth. Best practices demonstrate the efficacy of community participation and control, culture as treatment, the vital role of traditional ceremonies and practices, Aboriginal role models and media, and the inextricability of healing and community development. They do not endorse RCAP's recommendation for healing centres and lodges, but find, "Community-based and systemic approaches are both more effective and more cost-effective than the development of institutional facilities." While underlining the ongoing need for better measures of efficacy, ACPU (2002b) also reports the finding of a major study by Eliany & Rush (1992) that "Community-wide interventions such as education and media campaigns appear to be most effective towards changing social norms rather than fostering behavior change."

ACPU (2002a) has learned too from the experience of the "Scared Straight" program begun at Rahway Prison, New Jersey, in the mid-1970s. That program has shown "no significant change in attitude" in the targeted youth. Despite minimal deterrent effect, the programs continue "because of contextual factors such as political climate, media climate and simple inertia"—all "backed up by the all-too-common belief in the panacea of deterrence." Not only was it ineffective, but it was manifestly inappropriate in approach for First Nations (ACPU, 2002a).

Instead, projects in Canada like The Stone Path in Manitoba have made good use of offender experience to have them give back to the community by working with First Nations youth (10-14 years of age) to prevent crime by teaching them about the realities of gang life. Thus, there was a "double benefit" to the program (ACPU, 2002a). Similarly, Partners in Healing in British Columbia exploited offenders as a resource, especially their skill and rapport with young people. Working under the guidance of the Elders, parole officers, correctional staff, lawyer, and members of the community, selected inmates with minimum classifications (including lifers experienced in matters spiritual) met in circles with school, college, and university Native Education classes. Again the benefits were mutual, though the program fell victim to inadequate fiscal and administrative support. But some "brothers" still participate and the young drum group lives on (ACPU, 2002a).

And Saskatchewan Justice and Corrections and Public Safety (SJSCPS, 2003) likewise supports partnerships, integrated strategies, and community capacity building, including initiatives of the LaLoche Community Development Corporation (to coordinate and administer justice services, including prevention, victim services, courtworker and translator/interpreter services).

The Regina Alternative Measures Program (RAMP), established in 1996 as a restorative justice program, built on grassroots initiatives of Aboriginal organizations to Aboriginal and non-Aboriginal youth and adults in Regina in conflict with the law. It is now widely recognized as "one of Canada's leading authorities on Family Group Conferencing practices" (RAMP, 1999). The RAMP (1999) Year End Report makes vivid the costs and benefits of such alternatives to the court system, based on a "typical" youth offender. The cost saving for the one offender was $2,393.50; for the 63 young offender "assault" referrals in 1998, the saving would have been $150,790.50 per year. The benefits included:

- 3001 referrals (60 per cent adult, 40 per cent youth) from the court system between 1996 and 1998.

- overwhelming majority of adult and youth offenders completed their alternative measure requirement and had charges dropped.

The Saskatoon McNab Park Youth Project is another such success story, showing a remarkable return on the investment of community resources in a 78 per cent decrease in crime, enhanced infrastructure, and strengthened community capacity (Lockwood, 2003). And the Peacekeepers Program is another model showing how to rethink relations between police and youth in a long-term commitment based on various activities. After a one-year period of involvement, 50 per cent of participants did not re-offend; the remaining 50 per cent were involved in minor offences (Sinclair, 2004).

Evaluating Restorative Justice

Expanding rapidly in the 1990s, restorative justice, a set of principled approaches to justice in Canada, has built on Aboriginal traditions, faith communities, and non-governmental organizations, while supporting international principles and guidelines. Focused on victims, offenders, and communities instead of professional "experts" taking active roles, restorative justice has no single definition, but has taken a number of forms and been used at different stages for youth as well as adults in justice. Though support for restorative justice has been significant, concerns remain about how programs are designed, who delivers them, whether victim rights and interests are appropriately considered, what training is available, and what criteria and standards of evaluation apply (Cormier, 2002).

A meta-analysis by Bonta, Wallace-Capretta & Rooney (1998) of 14 evaluations found an 8 per cent reduction in recidivism. A comprehensive analysis by Latimer, Dowden & Muise (2001) of 22 studies of 35 restorative justice programs—focused on crime as violation of persons and relationships and the voluntary gathering of parties in safe settings (circles, conferences, and victim-offender mediations) to repair the harm and heal the community—identified these benefits:

- high satisfaction of offenders and victims.

- offenders more likely to make restitution.

- re-offending reduced by 7 per cent.

SJSCPS (2003) reports similar results in the province with strong evidence of community involvement, 80 per cent youth and adult alternative measures cases resulting in agreements on remedy, about 90 per cent fulfillment of agreements, and a 4:1 correlation between increased alternative measures and reduced community caseloads. Investing more consistently and effectively in alternatives, supporting and coordinating police and other agencies and stakeholders to increase pre-charge referrals, could further reduce formal charges and costs to the justice system.

Though the successes are striking, it remains a major challenge to persuade public opinion and decision-makers of the benefits of change and the costs of resorting habitually to the court system and traditional sentencing and other procedures that research has proven inadequate to reduce recidivism or to enhance public safety. In the contested terrain of public opinion on crime and justice, as Roberts (2001) makes clear, the good news "has a hard time competing with the daily reports of individual crime impacting on local communities." It is especially challenging when capacities to evaluate and measure the benefits and costs of alternative measures (including the range of social, human, and physical infrastructure) still need to be refined and especially to do so in terms meaningful to the public habituated to "hard data."

7.0 CONCLUSIONS

7.1 Recognizing Individual and Collective Responsibilities

> **Yes, we can go around blaming other people, but it begins with us, as the Elders say. But our children, we must teach them the walk of our ancestors.** (Speaker at Pelican Narrows dialogue, Commission, 2003c)
>
> **Justice reinvestment "is more than simply rethinking and redirecting public funds. It is also about devolving accountability and responsibility to the local level. Justice reinvestment seeks community level solutions to community level problems."** (Tucker & Cadora, 2003)

While governments continue to argue on "the semantics of responsibility," according to the Privy Council Office (qtd. in Chalifoux & Johnson, 2003), the Federation of Saskatchewan Indian Nations has shown leadership in accepting responsibility, in stressing that youth gangs, for instance, are "a manifestation of our collective social and services breakdown for which society and communities are responsible" (FSIN, 2003). Responding to a complex set of issues means for the FSIN a collaborative response and working with other groups, including the Saskatoon and Regina City Police and the RCMP as well as academics and universities to build community capacity and educate the general public. Especially important is a relationship with the Correctional Service of Canada and the Prairie region's Aboriginal Gang Initiative under the title *Bimosewin*—"an Ojibway term meaning taking responsibility for one's life" (FSIN, 2003).

Only by such collective ownership will the province live up to commitments to the United Nations Convention of the Rights of the Child and the duty to protect children's rights:

> **The principle of non-discrimination is included in all the basic human rights instruments and has been carefully defined by the bodies responsible for monitoring their implementation. The Convention on the Rights of the Child states frequently that States need to identify the most vulnerable and disadvantaged children within their borders and take affirmative action to ensure that the rights of those children are realized and protected.** (qtd. in FSIN, 2003)
>
> **Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community.** (1993 position paper by Community Holistic Circle Health Program [CHCH]; qtd. in Ross, 1994)

If incarceration seemed self-evidently the best solution to end the cycle of abuse in the community of Hollow Water, Manitoba, and especially in "too serious cases," decision-makers soon discovered that boundaries between levels of seriousness were not readily maintained, were indeed "gross over-simplifications, and certainly not valid from an experiential point of view." What is more, incarceration had less to do with "healthy resolution of the victimization" and addressing "the complexity of the issues" (Ross, 1994) than with mixed feelings and personal issues and reinforcing the very behaviours it was designed to end. Even the threat of punishment proved counter-productive and reinforced the silences that sustain cycles of violence:

> **The use of judgement and punishment actually works against the healing process. An already unbalanced person is moved further out of balance.**
>
> **What the threat of incarceration does do is keep people from coming forward and taking responsibility for the hurt they are causing. It reinforces the silence, and therefore promotes, rather than breaks, the cycle of violence that exists. In reality, rather than making the community a safer place, the threat of jail places the community more at risk.**
>
> **. . . The healing process of all parties is therefore at best delayed, and most often actually deterred. . . . We cannot understand how the legal system doesn't see this . . .** (1993 position paper by Community Holistic Circle Health Program [CHCH] qtd. in Ross, 1994)

The representatives of the CHCH program did not equate their position with either "an easy way out" for victimizer, or with the victimizer "getting away," but with a means of "establishing a very clear line of accountability between the victimizer and his or her community":

> **Our children and the community can no longer afford the price the legal system is extracting in its attempts to provide justice in our community.**

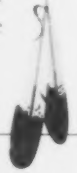
7.2 Making Mainstream Institutions Accountable

> **Free your minds from the need to dominate First Nations Peoples because the pain and suffering that this criminal justice system has inflicted upon First Nations people cannot continue.** (Flavel; cit. in Gosse, Henderson, and Carter, 1994)

We can only produce meaningful change if we turn the critical gaze more fully on the system—its culture, personnel, programs, policies, and procedures—rather than yet again quantifying those who are processed, penalized, and rendered passive by that system. And we should not leave that work only to the so-called "experts"! We (and the institutions of the law, education, and religion, for example) are all implicated in a history of injustice and are all capable of contributing and co-operating to produce new solutions by building on the excellent work—and clear directions—of the Commission Stakeholders Roundtable and activating the intelligence and knowledge systems of all of us inside and outside the justice system.

When Aboriginal peoples "say today that they have had to go to court to prove they exist, they are speaking not just poetically, but also *literally*" (Culhane, 1998). And there is no denying the costs of such defensive postures (especially with limited resources) and the charges of special pleading they typically entail. What Monture-Angus (1995) recommends is a refocussing of energies and analyses, "turning the conversation around so that Canada is required to be accountable for the wrongs it has perpetuated . . . . an articulation of their role rather than a repackaging of Aboriginal thought."

It means probing the discourses of free inquiry and exchange, critical thinking, objectivity, impartiality, neutrality, disinterest, and excellence of mainstream authority, discourses that support while masking the interests of a privileged few. The more individuals and institutions are invested in these discourses, the less able they are ironically to countenance or tolerate, far less promote and value, difference–the diversity of thinking on complex matters, the diversity of interests people seek to advance, the diversity so crucial to a multicultural society and its democratic institutions. And it is the so-called "hidden curriculum" in education (Jackson, 1968), including legal education, what Dorothy Smith calls "relations of ruling" (qtd. in Margolis, 2001), so prominent yet so natural and habitual as to be invisible, that masks the particular interests of a disinterest that is an indifference to all but the privileges of the status quo.



To refashion the future and derive strength from our many peoples (as the Saskatchewan motto suggests), the mainstream might recall the privilege of carrying on conversations in their own languages and consider the experience of those who have so long experienced the justice system in terms of contradictions experienced when "forced to negotiate, converse, and discuss in a second and foreign language" (Monture-Angus, 1995). The system might ponder and take responsibility for its own role in producing and reproducing inequity and injustice, its own role in constituting race and racism, in labelling and thereby reproducing divisions and delinquencies. Then the system might be better able not only to respect but also to **internalize** the values and traditions of Aboriginal peoples for a holistic approach to justice.

Then we might not only give token respect but put Aboriginal values and traditions at the heart of everything we do. Then we might end the casual dismissal of integrated, holistic forms of healing that do not fit "the abstracted disciplines of Euro-Canadian universities" and thus "seem to include everything and therefore seem to mean nothing" (ACPU, 2002b). Then we might **all** experience a system that understands human values instead of abstracting people from their social and cultural contexts, a system that understands its mutual responsibilities and does not compartmentalize, hide behind narrow expertise, or pass the buck, but communicates across boundaries of expertise, race, gender, and abilities in the name of justice. Then we might "live most nicely together." And, as Monture-Angus (1995) makes clear, "Living nicely together is an onerous standard." If we can achieve these standards we can live up to the hopes of Erasmus (2002): "The world needs a model of peace and friendship between peoples that Canada is uniquely positioned to provide."

7.3 Ensuring Meaningful and Equitable Access

> **Let us face it, we are all here to stay.** (Chief Justice Lamer, *Delgamuukw v. British Columbia* [1997])

Making mainstream institutions accountable to all members of society is importantly related to meaningful and equitable access to institutions. Equitable access means redirecting resources **from** an exceptionally costly justice industry that categorizes and punishes **to** a more cost-effective set of alternative programs that targets mental and physical health, education, employment, and skills training that can prevent risk and promote capacity. Thus, we convert costs to benefits.

And equitable access means addressing barriers of history and geography, of race, ethnicity, class, age, gender, sexuality, and abilities that have disadvantaged First Nations and Metis peoples. To do otherwise is, as the Commission (2003c) makes clear, to revictimize people and subject them to continued risk of violence. The system has significant discretion at every stage — a privileged capacity that currently does a disservice to First Nations and Metis peoples, while continuing to advantage the mainstream on whom disproportionate resources are spent.

The example of Justice Gerald Morin with the Northern Cree Circuit Court (begun in October 2001) underlines the importance of those involved in court proceedings feeling legitimate and empowered to participate with some confidence and clarity. The court hearing cases in Sandy Bay, the Big River First Nation, and Pelican Narrows has judge, Crown prosecutor, court clerk, and two probation officers who speak Cree fluently. The Legal Aid lawyer has the support of an interpreter. Drawing on restorative justice approaches and referring many cases to human services agencies (SJSCPS, 2003), the court is being proclaimed a success with no appeals on record, though a formal Saskatchewan Justice evaluation is not yet complete. Justice Morin has talked powerfully about the value of the Cree court experience for the **feeling** of empowerment and justice by those given voice in their own terms. Not only do people feel better connected to the process and personnel, but there is a capacity to innovate in court practices that further attracts respect and even adulation from some "groupies" who attend Justice Morin's court. And such legitimacy is increasingly being demanded by other groups, such as the Dene, and in other sectors like health and education. Still, there are those that point out the system remains unchanged: "It's the system that we have to reform not as much as the people that work in it" (Commission, 2003c).

For Chief Roy Cheecham of Clearwater River Dene Nation, what communities need is education and training rather than more policing on-reserve. The RCMP has 14 members: "A fifteenth member is not the answer. At a cost of $100,000 per officer when salary and benefits are taken into consideration, you wonder if that $1.4 million couldn't be spent proactively. If you don't change the status quo, you'll need 28 officers in ten years" (Commission, 2003c).

7.4 Moving Forward in Multiple Sites in Multiple Ways

> **Keep a few embers**
> **from the fire**
> **that used to burn in our village,**
> **some day go back**
> **so all can gather again**
> **and rekindle a new flame,**
> **for a new life in a changed world.**
> (Chief Dan George & Helmut Hirnschall, 1974; qtd. in RCAP, 1996a)

No single strategy can effectively dislodge entrenched attitudes or patterns of behaviour (individual or institutional). Decolonizing to fashion postcolonial community futures requires attention to multiple and conflicted histories and geographies that have generated current challenges and opportunities. It means working together across our differences, refusing the old colonial categories that would police the boundaries of identity and relationship. It means promoting new coalitions, co-operation, and capacity building. We all have a stake in dismantling colonial legal and educational structures or other oppressive singularities that deny or distort our legitimate differences. Thinking in "a decolonized way" (Monture-Angus, 1995) is important for all of us because colonialism is what has taught us all—colonizer and colonized—how to (de)value difference, how to fragment and compartmentalize, how to legitimate the illegitimate, and how to reproduce hierarchy and disadvantage.

The Ontario Commission on Systemic Racism in the Criminal Justice System is clear that the way forward requires the following strategies:

- Anti-racism training of justice system personnel.
- Employment of racialized persons in the administration of justice.
- Participation of racialized persons in the development of justice policies.
- Monitoring of policies for evidence of racial inequality.

The "elimination of systemic racism" means integrating the principles of inclusion, responsiveness, and accountability into all aspects of the criminal justice system, together with an overriding commitment to restraint when invoking judicial sanctions" (qtd. in Commission, 2002).

We also need stories of those who have survived and succeeded, those First Nations and Metis academics, activists, elders and leaders, lawyers and judges—those role models—that have already made a difference in the justice system. And we need, as Turpel (1994), argues, "a new kind of political openness and honesty" so that we can redefine the future by "thinking concretely and sympathetically" together.

Then we might act collectively to change the status quo recognizing that First Nations and Metis crime is not the problem, that we also need to look to mainstream institutions for the root causes and risk factors associated with crime, and recognize, value, and promote First Nations and Metis institutions, ways of knowing, and participation in justice activities, problem-solving, and healing. We all have a stake in change, and we are all damaged by the residues and resurgences of colonial thinking and practice that perpetuate injustice. We cannot build effectively for the future within colonial monopolies on definitions. We cannot build effectively if, as Erasmus (2002) argues, "the conversation starts with the unilateral declaration 'You are not who you say you are!'"

It costs our community every time any of its members experiences fear, harassment, exclusion, illegitimacy, intimidation, alienation, hopelessness and every time people's powers, perspectives, and potentials are overlooked or undervalued. "The costs of conflict, in the courts and in society," says Erasmus (2002), "are unsupportable. The costs of doing nothing escalate with each generation. We have the capacity to imagine a better future and we have the tools at hand to realize it."

Erasmus (2002) wants to reframe the terms of intercultural discourse to renew "relationship between aboriginal and non-aboriginal peoples in Canada." Instead of resorting to legalistic discourse, this means talking "people to people" as well as "nation to nation," nourishing the "national community" by "an ongoing act of imagination, fuelled by stories of who we are." To renew the relationship of "mutual trust" on which the "peaceable kingdom" rests, Erasmus (2002) recommends three discursive shifts: "from aboriginal rights to relationship between peoples; from crying needs to vigorous capacity; from individual citizenship to nations within the nation state." In this message, Erasmus repeats the message of the multi-volume, but long neglected Report of the Royal Commission on Aboriginal Peoples (1996). Instead of polls and surveys and "unilateral declarations" and coercive definitions, we need stories and symbols that will fire the imagination to see us, as in the two-row wampum belt, "travelling together on the river of life." Then we might forget Aboriginal peoples as "exceptionally needy" and focus on Aboriginal capacity and the remarkable successes achieved all over the country in so many sectors.

If we can respect and **internalize** the values and traditions of Aboriginal peoples within mainstream institutions, then we might "live most nicely together" (Monture-Angus, 1995). If we can redeem our institutions and make them more relational, sociable, and modest, then we might live up to the hopes of Erasmus (2002) that Canada offer the world "a model of peace and friendship between peoples that Canada is uniquely positioned to provide."

7.5 Redesigning Research, Decision-Making and Policy Development

> **The pathway to a new relationship is paved with the long-term commitment to share the definitional power that creates the legitimacy whereby words and phrases gain their accepted meaning. . . . The re-examination of the way language sanctions particular worldviews and understandings is central to this process of change.** (Monture-Angus, 1999)

Instead of focussing only on problems (and their solutions), this report highlights opportunities for positive outcomes benefiting all and helping to realize the Commission vision of "Meyo Wahkotowin—One Community," its vision of a community no longer divided by colonial thinking (either/or and us/them) and identity categories that do an injustice to our common humanity. Instead, the Commission mandate means communities **researching and working together** across our differences—indeed, drawing strength from our differences (both/and and an inclusive "us")—"to create a healthy, just, prosperous and safe Saskatchewan."

If we not only value and respect First Nations and Metis identities, traditions, and heritage, but also make them foundational to all we do, then we might develop a revitalized justice system that speaks to and commands the respect and confidence of all of us in Saskatchewan. We might more effectively dispel myths and fears that have hindered change, recognizing that the barriers have been a product of colonial thinking, a product of our own minds, our versions of William Blake's "mind-forg'd manacles." Thus, we might more effectively build on and give real meaning to initiatives like the four strategic approaches of Saskatchewan Justice and Saskatchewan Corrections and Public Safety: building community ownership and capacity; developing partnerships; adapting the criminal justice system to recognize and respect values of Aboriginal peoples and meet needs for safety and security; and improving service effectiveness to all stakeholders. The words are inspirational, but now we need action.

A justice system that relies too heavily on professional expertise and so-called hard data or quantitative measures is inclined to leave qualitative measures off the map (or relegate them to secondary status) with profound consequences for the perceptions and decision-making of the general public and policy makers. And belief in the "hard" data's ability to describe reality obscures how the data help produce the very "problems" they claim exist "out there" in the real world—much as the notion of terra nullius justified "the discovery" of North America and the dispossession of its peoples. Dominant forms of demographic representation, for example, is marred by what is considered valuable and what not, what is and is not collected, and by persistent statistical comparisons based on faulty baselines—as is the case with projecting police and other participation rates on the basis of findings by Quann & Trevethan (2000) and projecting the participation rates of Aboriginal youth and adults on the basis of their proportional representation in the population at large. It is also marred by the colonial categories and simplifications of complex identities (collapsed into the crude calculus of Aboriginal/non-Aboriginal, for instance). In the process specifically Metis concerns in Saskatchewan and Inuit concerns in the North often miss the radar.

And when financial accounting measures dominate, a range of benefits such as social, physical, and human capital—less tangible but no less real in people's lives—fail to register in the benefit-cost calculus. Working together on data collection and demographic representation—professionals and local community members, people representing our diversities in ethnicity, gender, age, abilities, etc.—we might counter these dominant reporting trends by attending to qualitative as well as quantitative measures, stories as much as statistics, to give better assessments of costs and benefits.

Further, surface concern with social indicators diverts attention from the ways that the justice system has itself been the source of domination and oppression and leaves people feeling impotent to act or to intervene in historical "cycles" that seem destined to repeat themselves. To ignore the role played by the law in establishing and enforcing definitions of race as well as racial stereotypes and discrimination (Backhouse, 1999) is to defer indefinitely meaningful reform to the administration of justice and the realization of Aboriginal aspirations. Not to recognize that "over-representation" depends on representational presumptions that unfairly racialize—that is, categorize and generalize on the basis of a single feature presumed to be defining—while claiming objectivity is likewise to defer meaningful change. Thus, the tool of "over-representation" contributes in turn to broad characterizations of "cultural divides," to insufficient analysis of the meaning of these privileged justice indicators, to failures to hold the system to account—and to a diminished ability to intervene and change the way things are done.

In the meantime, the allocation of resources continues to support lucrative expertise to define and address problems and solutions **for** Aboriginal peoples who continue to be excluded in large measure from control of the process. It is ironic that those who disdain Aboriginal ways of knowing and want Aboriginal people to acquiesce to mainstream ways are precisely the ones who hold most tenaciously to their own cultural and privileged presumptions about knowledge, evidence, and justice.

At the same time, the system continues to rely heavily on tens of thousands of hours of volunteer labour, knowledge, and experience, while under-valuing and under-resourcing alternative programming supported by volunteers—programmes that have proven benefits in terms of recidivism rates, for instance, and that build social cohesion by returning economic benefits to communities, ensuring greater client satisfaction, and reducing need for further intervention.

Throughout this report quantitative data and qualitative measures show an Aboriginal sector of the Saskatchewan population increasing—and the costs of their participation in the justice system likewise increasing substantially if we do not acknowledge our responsibilities for the current state of affairs and recognize our collective interest in change. While past research has typically exaggerated "exploding populations" and "mass exoduses" from reserves so that public and policy-makers have been inclined to read the data as threatening for the future of the province, our research and experience present a positive future in which Aboriginal peoples contribute powerfully to the social, cultural, political, legal, and economic fabric of Saskatchewan.

Those that maintain faith with mainstream statistics predict that, if things do not change, the numbers of Aboriginal peoples involved in all areas of justice will also increase in proportion to the representation of Aboriginal peoples in Saskatchewan in general. But such predictions are based on historical trends in the Aboriginal population (from 1996 to 2001, for example) that are unlikely to be repeated given the extensive community healing initiatives, enhanced community capacity and infrastructure, documented increases in education and labour force participation, and marked increases in economic development both on and off-reserve and in public and private partnerships.

More extensive and meaningful Aboriginal participation in research, data collection, and service provision continues to be a pressing need. To date, mainstream data has been typically provided by bureaucrats and justice workers and not by Aboriginal peoples themselves. This is problematic for, as Morgan (1997) aptly points out, "as we become increasingly subject to administration through rules and engage in strict calculations relating means and ends and costs and benefits, we [may] become increasingly dominated by the process itself." As a consequence, the "over-represented" Aboriginal participation in the justice system in Saskatchewan has been produced by the process and analysis of Aboriginal justice itself. The question that Morgan (1997) and others might ask about the rational analysis of the population and justice statistics is "*Rational for Whom?*" Morgan (1997) would argue that those involved in the analysis of Aboriginal "over-representation" in the justice system and the creation of policy to "deal" with this situation are rationalizing and clarifying for themselves their place and role in the process — in other words, they are rationalizing extended over-investment in the justice industry of which they are beneficiaries.

Meanwhile, many of the data collectors and policy-makers remain well-intentioned and are convinced that their statistics are neutral and objective records of the "truth," after all! Inevitably, however, the clarification and dissemination of the rational "facts" comes with damaging generalization and simplification, and the omission of valid information relevant to marginalized interests.

In addressing entrenched patterns of data collection and analysis, public and policy-makers need to understand that, out of context, the numbers do not do justice to the lived reality or the systemic barriers faced by First Nations and Metis people in Saskatchewan. Mainstream demographic representations continue to obscure the rich resources, the capacities, successes, and achievements of Aboriginal adults and youth. Policy makers must draw on qualitative as well as quantitative measures, and include multiple categories of identity wherever possible (age, gender, abilities, education, etc.) in order to highlight some key factors that can direct us to areas for and means of change.

Public and policy-makers might understand too that those advocating Aboriginal self-determination inside and outside the justice system are not necessarily arguing for separate and distinct institutions and jurisdictions. It is not a question of either/or, winners or losers, but of how we all stand to gain from institutions in which all members of the population have a say. Effective policies must begin with extensive Aboriginal participation and definition of what counts as evidence. A cost-benefit analysis from this perspective would advocate and argue the costs and benefits valued by the Aboriginal community and valuable for all communities in Saskatchewan.

The future course of events for Aboriginal peoples involved in the Canadian justice system is not pre-determined by historical trends or the "current situation." For example, the potential increase in the number of Aboriginal peoples incarcerated in provincial corrections will decrease if programs are developed to better meet the needs of those youth affected by FASD. Programs such as the Peacekeepers Program that attend to the social, physical, mental, emotional and cultural needs of Aboriginal youth at greater risk will lead youth in the direction of education rather than crime, of career development rather than a life behind bars. Adults in the federal corrections facilities empowered to develop businesses and entrepreneurial skills might teach newer and younger inmates how to create for themselves a different version of their own futures. An increased emphasis on Aboriginal education and labour force development initiatives will create, promote, and maintain healthy and sustainable alternatives to participation in the justice system. Otherwise we will continue to invest in prisons rather than people, $80 million for a 450 bed medium-security prison or $6.6 million for a 40-bed healing lodge (Krause, 2003). Or might such sums be better invested in education, health, housing, and career development?

We can with proactive and preventative measures, investments in collective, community solutions and alternative measures move beyond the adversarial and punitive to recognize and act on the value of education, community capacity-building, or programs for youth and inmates in making policy decisions. Then we might build just and sustainable communities that have a place for the values, knowledge, and experience of all of us and reduce excessive costs to address social breakdown. The seventh generation cannot afford the social or financial consequences of the status quo.

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IMPLEMENTATION – A BLUEPRINT FOR RETURNING JUSTICE TO THE COMMUNITY

10

IMPLEMENTATION – A BLUEPRINT FOR RETURNING JUSTICE TO THE COMMUNITY

INTRODUCTION

The Commission on First Nations and Métis Peoples and Justice Reform has been very aware of the need to work with all parties to create an implementation vehicle that would succeed this Commission and ensure that the recommendations presented were addressed by the appropriate levels of government and were implemented as quickly as possible.

Recommendation 10.1

This Commission recommends that, the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan be required to report to their respective legislatures within six months of the release of this report on what action it has taken relating to the recommendations contained in this report.

The Terms of Reference for the Commission contain this important directive:

> **The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations.**

Recommendation 10.2

This Commission recommends that, the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan, through discussions at a working group initiated by this Commission, jointly support and establish an Office of the Implementation Commissioner.

With this in mind, the Commissioners have devoted considerable time to the discussion regarding an implementation vehicle. The Commission invited a number of people to participate in two roundtables focussing on the concept of an implementation vehicle. Other individuals with experience in designing and working with an implementation process have been consulted. As well, a working group with representatives from the federal and provincial governments, the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan has been holding meetings regarding an implementation strategy.

With respect, the Commission believes that the failure of previous commissions to initiate reforms that would have had a significant impact on the lives of First Nations and Metis people and their relationship with the justice system has been a result of a failure to create an implementation vehicle or to monitor and lobby for reform. As a result, despite the many recommendations the numerous commissions have tendered over the past three decades, little positive change has occurred. And while many recommendations have been implemented – either legislatively or through policy or procedural reform – there has rarely been a process to measure the success of these recommendations. For these reasons, it is important that an implementation vehicle be designed that will truly propel a climate for change in Saskatchewan.

> **Throughout the consultation process, community members voiced a number of concerns pertaining to implementation. We were reminded that numerous commissions that have gone before us, such as the Royal Commission on Aboriginal Peoples, Aboriginal Justice Inquiry, and Alberta Task Force, have failed. While they made many excellent recommendations, many were not implemented. This could be attributed to a lack of an implementation vehicle, to ensure that recommendations were implemented. This is why the development of an implementation vehicle is key to the success of the Commission on First Nations and Metis Peoples and Justice Reform. The Metis people of Saskatchewan want to see action and this is only possible through the implementation of recommendations. This will be the true measure of the Commission's success.** (Submission by Metis Family & Community Justice Services Inc.)

In order for the Commission on First Nations and Metis Peoples and Justice Reform to leave a lasting legacy that would truly "Return Justice to the Community," it is essential that the Working Group continue discussions to establish an Implementation Office.

MOVING FORWARD

The four partners, the Government of Saskatchewan, the Government of Canada, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan, are in agreement that the creation of an implementation vehicle is vital to the success of this Commission. Discussions have been underway for several months and there is agreement on the subject of creating a vehicle that will ensure the work of the Commission is taken seriously after the release of our final report on June 21, 2004.

> **As well, it is important that we gather momentum and support for the Commission, as we must gain political will. We will require strong political will, from all partners, to ensure that these recommendations are followed through. There must be "Champions for Change," at both the political and community level. However, the most critical issue is the development of an implementation vehicle. There must be some form of implementation, or this**

> **Commission will fail, as did its predecessors. The development of an implementation vehicle must be inclusive and respectful of the Metis Nation – Saskatchewan governance structures as well as the Metis community. Any implementation discussions or negotiations should be based on a government to government (or Nation to Nation) relationship with all parties involved: MN-S, FSIN, provincial and federal governments.** (Submission by Metis Family & Community Justice Services Inc.)

Recommendation 10.3

This Commission recommends that the Working Group consisting of the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan continue to meet regularly following the release of this final report. Their objective should be to lead the way in the creation of an Office of the Implementation Commissioner by October 1, 2005.

IMPLEMENTATION COMMISSIONER

At the helm of the implementation office will be the Implementation Commissioner who will ensure that the mandate is achieved and the recommendations of the Commission are implemented.

> **What actually sustains implementation is leadership. You have to have champions. In all areas that are dealing with the implementation process there needs to be champions. People who are prepared to continue to issue the positive messages that we can do this, that this is not hopeless, this is not beyond us as thinking, reasoning, good-willed people who can make a change.** (Speaker, Implementation Roundtable)

Recommendation 10.4

This Commission recommends that the Implementation Commissioner be an independent officer who has inter-jurisdictional authority and will annually report to the respective Legislative Assemblies through an identified mechanism (a standing committee, a council, regional body or commission).

Recommendation 10.5

This Commission recommends that the Implementation Commissioner is appointed, by agreement of the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan by April 1, 2005.

THE IMPLEMENTATION OFFICE

The establishment of the implementation vehicle will take place through a working group with representation from the Government of Saskatchewan, through an all-party committee, the Government of Canada through the Saskatchewan Council of Senior Federal Officials, the Federation of Saskatchewan Indian Nations through its Justice Secretariat and the Metis Nation – Saskatchewan through Metis Family and Community Justice Services Inc.

This office would be an independent, permanently funded agency that would serve as a link to and between communities. This body would require legislation that would give it authority to act independently on behalf of communities to ensure that recommendations are being implemented.

> **The Commission's approach to the issue of implementation is to build on the potential of the people. Communication in general is a big problem and this needs to be addressed head on. Trust and the building of relationships is the first of many challenges. Any implementation plan needs "buy in" at every level – individual, family, community, institutions and all forms of government. We need to be frank about what this Commission is expected to take on, as the problems have developed over generations and addressing those problems will take time.** (Speaker, Implementation Roundtable)

Recommendation 10.6
This Commission recommends that the governments of Canada and Saskatchewan share the cost of establishing and operating this office with the percentage to be negotiated by these two levels of government.

MANDATE

To provide a vehicle with legislated authority:

- To monitor the implementation of the recommendations of the Justice Reform Commission.
- To advocate for individual and systemic changes that affect the justice system but are not restricted to the justice system.
- To educate and inform leadership and their respective governments on the need for change.
- To exchange information with community about First Nations and Metis issues and concerns.

- To report annually to the public through the respective Legislative Assemblies.

- To effect change, supervise and ensure compliance with the spirit and intent of the Commission's recommendations regarding the well-being of First Nations and Metis people.

Recommendation 10.7
This Commission recommends that in addition to the authority to execute a defined mandate, that adequate resources be provided by the governments of Canada and Saskatchewan, to the Implementation Commissioner to establish an office and a process to receive advice from others to ensure that the work of the Implementation Commissioner remains future focused and accountable to the community.

PRINCIPLES OF IMPLEMENTATION

- Inclusivity – the principle of inclusivity requires that all people have the ability to make or influence the decisions that affect their lives.

- Holistic – the principle of holism requires that a healthy balance of a person's spiritual, emotional, mental and physical aspects be considered. Given that justice is the response to the failure of other institutions and systems in society, the response to justice reform needs to be an integrated one.

- Future focused – the principle of building on the past and looking to the future is important.

- Mutually responsible and beneficial – the principle of participatory democracy provides for meaningful participation in the democratic process between governments and peoples, including First Nations and Metis peoples.

- Shared resources – the principle of sharing requires that the promise of Treaty and Aboriginal rights is respected.

JURISDICTION

In order to meet its mandate, the implementation vehicle must have broad jurisdiction. The Commission has recognized that the solutions to the problems of First Nations and Metis people as they relate to the justice system are often to be found by addressing shortcomings in other areas. For this reason, and in the spirit of addressing the problems of First Nations and Metis people in a holistic fashion, it will be necessary for the Implementation Commissioner to have access to information across sectors and jurisdictions.

GRANDMOTHER'S AND YOUTH ADVISORY CIRCLE

A Grandmother's and Youth Advisory Circle would be established to provide the implementation office with the wisdom of the Elders and the perspective of young people. This circle would meet regularly and be available to consult with the Implementation Commissioner and staff as the need arose.

CONCLUSION

Now that the work of the Commission has been completed it is essential that the positive momentum that has been generated and the lines of communication that have been established not be lost. Reform is an ongoing process that must be started immediately.

SUMMARY OF FINAL REPORT RECOMMENDATIONS

11

SUMMARY OF FINAL REPORT RECOMMENDATIONS

CHAPTER 1 EMPOWERING FIRST NATIONS AND METIS LEADERSHIP

Recommendation 1.1

This Commission recommends that the Office of the Treaty Commissioner's mandate be continued beyond 2005 and that the **Government of Canada, the Federation of Saskatchewan Indian Nations, and Office of the Treaty Commissioner,** with an expanded mandate, accelerate their discussions concerning Treaty-based governance and take into account recommendations of this Commission in concluding agreements as quickly as possible.

Recommendation 1.2

This Commission recommends that the **Government of Canada and the Metis Nation - Saskatchewan** establish a Nation-to-Nation dialogue aimed at establishing appropriate governance structures for the Metis people that will address justice issues, as well as other aspirations and needs of the Metis people.

Recommendation 1.3

This Commission recommends that the **Government of Saskatchewan** also participate in these discussions as an observer.

Recommendation 1.4

This Commission recommends that:

1.4.1 The **governments of Canada and Saskatchewan** establish First Nations and Metis Leadership Development Funds to promote leadership training for First Nations and Metis people.

1.4.2 That an Institute on Traditional Law and Governance be established by 2007, to provide training to First Nations and Metis professionals and leaders in Saskatchewan.

Recommendation 1.5

This Commission recommends that **post-secondary institutions and professional associations** work together to develop plans that will ensure that professionals already in the field have access to programs of continuing professional education that emphasize cultural issues associated with the provision of justice services.

Recommendation 1.6

This Commission recommends that the **governments of Canada and Saskatchewan, justice and health authorities, and traditional practitioners** co-operate to protect and extend traditional justice and healing practices, and explore their application to contemporary First Nations and Metis community concerns.

Chapter 2 Creating Healthy, Just, Prosperous and Safe Communities in Saskatchewan

Recommendation 2.1
This Commission recommends:

2.1.1 That the **Government of Saskatchewan** finance a long-term targeted fetal alcohol spectrum disorders (FASD) strategy that includes prevention, intervention and follow up to address the life-long disabilities caused by alcohol use and abuse.

2.1.2 That **the governments of Canada and Saskatchewan, Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan** collaborate on a fetal alcohol spectrum disorders awareness-training program that will be delivered to all people who work with children and youth and their families, including the police, to create a level of awareness.

2.1.3 That the **Saskatchewan Police College** deliver a fetal alcohol spectrum disorders training module to all new recruits to provide an understanding of fetal alcohol spectrum disorders.

2.1.4 That the **Government of Saskatchewan**, primarily child welfare and health authorities, review the legislation and policy as it relates to the provision of services to people with fetal alcohol spectrum disorders to ensure that they are not excluded by virtue of their IQ and to ensure that support services are provided to families, in the absence of protection concerns.

Recommendation 2.2
This Commission recommends that the **governments of Canada and Saskatchewan** streamline the funding process for crime prevention interventions in consultation with communities and provide core-funding arrangements to programs that have proven successful.

Recommendation 2.3
This Commission recommends that the **Government of Canada**, in consultation with the other orders of government, develop Saskatchewan First Nations and Metis Peoples Social and Economic Policy Plans focused on improving quality of life for First Nations and Metis people.

Further, that the Implementation Office be responsible for monitoring and reporting on progress.

The plans must develop policy, through taking into consideration the practices and customs of First Nations and Metis people including, but not limited to, the following goals:

- eliminate poverty;
- improve educational attainment;
- increase employment;

- provide appropriate housing;
- promote health especially in the areas of addictions, including fetal alcohol spectrum disorders;
- transfer of resources to the community; and
- respond to the realities of urbanization.

Recommendation 2.4

This Commission recommends that the **Government of Saskatchewan**, in partnership with First Nations and Metis communities, design a proactive targeted Saskatchewan Crime Prevention Strategy by April 1, 2005.

Recommendation 2.5

This Commission recommends that the **Government of Saskatchewan** divert funds currently spent on reacting to crime in the criminal justice system, to proactive targeted community based prevention projects.

Recommendation 2.6

This Commission recommends that the **Department of Indian and Northern Affairs Canada** review the funding arrangement with First Nations Child and Family Services agencies to ensure that services to prevent children from coming into care are funded.

Recommendation 2.7

This Commission recommends that **all governments** increase supports to single parents, including providing adequate social assistance, respite, parenting knowledge and skill development.

Recommendation 2.8

This Commission recommends that the **Government of Saskatchewan** facilitates a discussion with youthful parents regarding the concept of parenting centres/co-operatives to provide youthful parents respite, parenting knowledge and skill development.

Recommendation 2.9

This Commission recommends that the **Department of Community Resources and Employment** engage community and the various government departments and agencies providing services to children and their families, and together develop local community plans to strengthen family through provision of culturally relevant, parenting skill training.

Recommendation 2.10

This Commission recommends that the **governments of Canada and Saskatchewan, Federation of Saskatchewan Indian Nations and Métis Nation – Saskatchewan** build strategies to respond to gangs that includes: education, prevention and intervention, and that information about gangs be provided to parents, schools and communities.

CHAPTER 3 VIOLENCE AND VICTIMIZATION

Recommendation 3.1
This Commission recommends that the **Government of Saskatchewan**, specifically the **Minister of Community Resources and Employment** review this regulation with a view to increasing the amount of exemption for those on social assistance who receive a settlement from the **Government of Canada** for abuse suffered during their residential school experience and that the **Government of Canada** also reconsiders their position to a cap on their settlement.

Recommendation 3.2
This Commission recommends that **education systems, Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan, and others**, support the introduction in kindergarten and Grade 1 of: non-violence alternatives, information about violence in its many forms, the effects of such violence and solutions thereto, including the responsibility shared by all to eliminate violence, and that it be reinforced in subsequent grades.

Recommendation 3.3
This Commission recommends that all schools, with a high number of children who are living in poverty, implement a school nutrition program.

Recommendation 3.4
This Commission recommends that **all governments** promote the use of non-violent alternatives to child correction. Steps must be taken to ensure laws, policy and practice comply with the direction provided by the Convention on the Rights of the Child.

Recommendation 3.5
This Commission recommends that there be greater consideration given to delivering domestic violence programs that focus on dealing with partners and families.

Recommendation 3.6
This Commission recommends that **all levels of government** ensure that family violence programming for men and women is supported and more available.

Recommendation 3.7
This Commission recommends that the **Government of Saskatchewan** develop public awareness materials related to violence specifically suited for the needs of northern residents. To ensure that material is suited for needs in the North, there must be consultation from northern residents, including young people.

Recommendation 3.8
This Commission recommends **all levels of government** immediately resolve the jurisdiction dispute around the *Victims of Domestic Violence Act* on Indian reserves.

Recommendation 3.9

This Commission recommends that the **Government of Saskatchewan or First Nation Councils or Métis Nation – Saskatchewan**, whichever is appropriate, ensure that transportation is provided to women seeking shelter from violent situations and that adequate funding be provided for their stay.

Recommendation 3.10

This Commission recommends that:

3.10.1. There be funding from **all governments** to increase the number of beds available for women seeking safety from domestic violence situations;

3.10.2. Funders providing resources to shelters ensure sufficient funds for the agencies to provide more training to their staff and more outreach to communities.

Recommendation 3.11

This Commission recommends that **agencies** providing shelter services to women and police services meet to find a solution to the issue of sharing information within the parameters of the privacy legislation.

Recommendation 3.12

This Commission recommends that the **governments of Canada and Saskatchewan** expand Victim Services in the province.

Recommendation 3.13

This Commission recommends that the **Government of Saskatchewan** provide funding to study the effectiveness of domestic violence programming.

Recommendation 3.14

This Commission recommends to **all governments** that there be further study on the concept and impact of hope, with a view to including hope in programming and assessment.

CHAPTER 4 RESTORATIVE JUSTICE: RESTORING JUSTICE IN SASKATCHEWAN

Recommendation 4.1
This Commission recommends that **every level of government** support the education of police, lawyers and judges to recognize mental disorders and disabilities, in order to divert persons with mental disorders and disabilities to appropriate resources.

Recommendation 4.2
This Commission recommends the following immediate steps:

4.2.1 Funding be allocated by **all levels of governments** to therapeutic resources with a First Nations and Metis focus, including: drug addiction, follow up care, and healing initiatives.

4.2.2 That meaningful sentencing alternatives be developed by **Saskatchewan Justice in cooperation with communities** and **Courts,** to allow for intensive therapy involving Elders, healers, and supports for family, and that these sentencing alternatives have a First Nations and Metis focus.

Recommendation 4.3
This Commission recommends that the Aboriginal Courtworker Program be adequately resourced by the **Government of Saskatchewan** to meet their current mandate and consideration be given to an expanded mandate that will enable courtworkers to incorporate restorative support for those appearing before the Courts.

Recommendation 4.4
This Commission recommends that system generated charges be dealt with administratively as follows:

4.4.1 Youth who are subject to system generated charges and lower level offences be referred to Elder led community based teams to discern and consider ways to meet the needs of the youth outside of the Courts.

4.4.2 Adults who are subject to system generated charges and lower level offences be referred to community teams to discern and consider ways to meet the needs of the individual restoratively, outside of the Courts.

CHAPTER 5 POLICING

Recommendation 5.1

This Commission recommends the implementation of a strategy to eliminate racism in policing by the **Saskatchewan Police Commission**. This strategy shall contain:

5.1.1 Police recruitment screening strategies specifically to prevent candidates with racist views on ethnic or religious groups from being offered employment.

5.1.2 A complaints process that requires allegations of racist language or behaviour against individual officers to be reported to the officers' immediate supervisor and the chief of police.

5.1.3 An intensive remedial training program for police officers who exhibit racist attitudes. This program must be successfully completed to the satisfaction of the officer's supervising officer and the program facilitator.

5.1.4 The tools which would allow the immediate supervisor or chiefs of police to respond immediately to allegations of racism.

5.1.5 A pro-active First Nation and Metis candidate recruitment strategy.

5.1.6 Employment assistance counselling for First Nations and Metis candidates that will assist them with the pressures of working within a police service that has traditionally been dominated by non-Aboriginal people.

Recommendation 5.2

This Commission recommends that all **police services** invite members of the First Nations and Metis communities to evaluate the effectiveness of existing cultural awareness programs and implement changes as required.

Recommendation 5.3

5.3.1 This Commission recommends that **urban police services** have a First Nations and Metis staffing component that is equal in percentage to the respective populations.

5.3.2 This Commission recommends to the **RCMP** that Community Police Boards and Police Management Boards participate in the selection, posting and orientation of RCMP members to detachments that serve their community.

Recommendation 5.4

This Commission recommends that the **Government of Saskatchewan**, in view of the fact that it invests in community policing initiatives, conduct province-wide surveys every two years to monitor the degree of public satisfaction regarding community policing within all communities.

Recommendation 5.5

5.5.1 This Commission recommends that **Saskatchewan Justice** and the **Aboriginal Policing Directorate** in the federal Solicitor General's office ensure that Community Police Boards and Police Management Boards receive adequate resourcing and training to ensure that community based policing is supported and successful in all communities.

5.5.2 This Commission recommends that Police Management Boards and Community Police Boards that share one police service be amalgamated and ensure equal representation.

5.5.3 This Commission recommends that police officers working in First Nations and Metis communities, including urban neighbourhoods with high First Nations and Metis populations, be required to meet regularly with Elders and other community leaders in order to learn more about the culture of the people they are working with.

Recommendation 5.6

This Commission recommends that all **police services** be required to prepare reports to justify any decisions that do not divert matters extra-judicially.

Recommendation 5.7

This Commission recommends that the **Government of Saskatchewan** establish emergency detoxification facilities in cooperation with municipalities immediately in La Ronge, Prince Albert, Saskatoon and Regina. In remote areas, the Commission recommends that these facilities are incorporated into the local hospital, or in these remote communities, provision be made for sobering up houses as an alternative to drunk tanks.

Recommendation 5.8

This Commission recommends that the **Government of Saskatchewan**, in cooperation with municipalities, establish detoxification facilities for youth in Saskatchewan.

Recommendation 5.9

5.9.1 This Commission recommends the increased use of video recording equipment by **RCMP and municipal police services**.

5.9.2 This Commission recommends that an Aboriginal liaison worker or volunteer individual be available for First Nations and Metis people upon their arrival at a police station or detachment office.

Recommendation 5.10

This Commission recommends that representatives of the **Federation of Saskatchewan Indian Nations, Metis Nation – Saskatchewan, governments of Canada and Saskatchewan** work together to develop an independent complaints investigation agency that will meet the needs of First Nations, Metis and non-Aboriginal people with the objective of having such an agency in place by April 1, 2005.

Recommendation 5.11

This Commission recommends that the **Implementation Commissioner** monitor and oversee the establishment of a complaints agency that will reflect and respect the spirit and intent of the existing Special Investigations Unit.

CHAPTER 6 JUSTICE INSTITUTIONS

Recommendation 6.1

This Commission recommends that the **Government of Saskatchewan** encourage and support the participation of potential First Nations and Metis jurors with the provision of resources for childcare and transportation where necessary.

Recommendation 6.2

This Commission recommends that the **Cree Court** concept expand both geographically and linguistically so that a First Nations or Metis person may attend court proceedings conducted in their own language.

Recommendation 6.3

This Commission recommends that all levels of court in Saskatchewan inform First Nations and Metis people appearing in court that they have the right to receive translation services, so that they fully understand the proceedings.

Recommendation 6.4

This Commission recommends that the **Government of Saskatchewan** gather representatives from the Court of Queen's Bench and the Provincial Court, together with at least one Metis and one First Nations northern representative along with representatives from the Government of Canada to explore ways to address a more satisfying and economically affordable solution to bringing family law matters to the North.

Recommendation 6.5

This Commission recommends that all courts be fully resourced by the **governments of Canada and Saskatchewan** to include the critical component of community involvement.

Recommendation 6.6

This Commission recommends that the **governments of Canada and Saskatchewan**, to ensure equitable and fair representation in the courts, appoint First Nations and Metis persons to sit as judges at every level of Court within Saskatchewan.

Recommendation 6.7

This Commission recommends that **all levels of government** encourage and promote Court points in First Nations and Metis communities where suitable facilities can be provided and maintained by these governments; in the alternative, these governments should begin to provide suitable video and audio links between inaccessible First Nations and Metis communities and the courts.

Recommendation 6.8

This Commission recommends that **all levels of court** be encouraged to use community based sentences for all offences (unless specifically prohibited by law) and that every level of government redirect resources to fund community based projects and help to facilitate community participation in sentencing.

Recommendation 6.9

This Commission recommends that a Therapeutic Court, preferably mobile, with the capacity to address issues such as alcohol and other addictions, fetal alcohol spectrum disorders, families in crisis and family violence, be immediately established and implemented in Saskatchewan and that new funding be provided specifically by **all departments and levels of government,** including First Nations and Metis governments, to facilitate an integrated response to the root causes of criminal behaviour.

Recommendation 6.10

This Commission recommends that the **Government of Saskatchewan** continue to work with communities, in collaboration with the **Government of Canada and First Nations and Metis Governments**, to establish community justice programs which will qualify as Alternative Measures programs under S.717 of the *Criminal Code of Canada*.

Recommendation 6.11

This Commission recommends that:

6.11.1 An Aboriginal Liaison person (or other approved community designate) participate in the decision as to whether to refer any alleged criminal behaviour to the community Alternative Measures program.

6.11.2 The Aboriginal Liaison person (or community designate) have the ability to apply to the Implementation Commissioner's Office to review a decision whether to refer alleged criminal behaviour to Alternative Measures. The Implementation Commissioner's Office must have the authority to access all material relating to this decision, to review it, and to advocate for the reversal of the decision where appropriate.

Recommendation 6.12

This Commission recommends that the **Government of Canada** amend s.717(1)(e) of the *Criminal Code of Canada* and S.10.2(e) of the *Youth Criminal Justice Act* to read as follows:

(e) the person accepts responsibility for their actions or does not contest the act or omission that forms the basis of the offence that the person is alleged to have committed.

Recommendation 6.13

This Commission recommends to the Government of Saskatchewan that all offences, whether Provincial Regulatory offences or *Criminal Code of Canada*, including spousal assaults and excepting homicide, be eligible for Alternate Measures.

Recommendation 6.14

This Commission recommends that **all levels of government** work towards the closure of incarceration spaces and divert resources thus saved to community-based alternatives.

Recommendation 6.15

This Commission recommends that **adult correctional centres, youth custody facilities, and the Correctional Service of Canada** work cooperatively with community justice programs, Probation Services and the offender in the design and implementation of reintegration plans.

Recommendation 6.16

This Commission recommends that:

6.16.1 Where requested by the community, **all levels of Government** should assist in the establishment and funding of Community Justice Committees.

6.16.2 Members and employees of Community Justice Committees be appropriately remunerated.

Recommendation 6.17

This Commission recommends that a comprehensive list be created, and regularly maintained, of all community based justice services available by the **Government of Saskatchewan**. This list should be provided to all prosecutors, legal aid lawyers and private defence counsel.

Recommendation 6.18

This Commission recommends that a pre-charge screening process with community involvement be immediately implemented throughout Saskatchewan by the **Government of Saskatchewan**. As part of pre-charge screening, Crown prosecutors should be instructed specifically to consider whether the matter in question could be referred to a community-based justice initiative as an alternative to Court.

Recommendation 6.19

This Commission recommends that the **Saskatchewan Legal Aid Commission** create First Nations and Metis articling positions and actively recruit First Nations and Metis lawyers.

Recommendation 6.20

This Commission recommends that the **Government of Saskatchewan** provide a toll free telephone line where people can get reliable, up-to-date information on family law matters.

Recommendation 6.21

This Commission recommends additional funding be provided to **Saskatchewan Legal Aid Commission** to hire more lawyers and provide broader legal services.

Recommendation 6.22

This Commission recommends that a public education campaign be designed and implemented by **all levels of Government** directed at providing accurate information on the benefits of non-custodial alternatives to imprisonment and re-integration into the community.

Recommendation 6.23

This Commission recommends to **Correctional Service of Canada, Saskatchewan Justice and Corrections and Public Safety**, that access to cultural and spiritual programming, whether traditional or religious, be made more available to First Nations and Metis people who are incarcerated in Saskatchewan.

Recommendation 6.24

This Commission recommends to the **governments of Canada and Saskatchewan** that more resources be provided to community service providers to develop and operate programs designed that aid offenders with their transition into the community when they are released from prison institutions.

Recommendation 6.25

This Commission recommends to **Correctional Service of Canada** that, prior to a change in legislation, and given the healing nature of ceremonies, medical leave be granted to detained offenders to attend spiritual ceremonies outside the institution grounds for the purpose of healing if an offender has been involved in cultural programming in the institution, has the support of the Elders and Correctional Service of Canada, will be strictly supervised during the absence and has the support of the National Parole Board.

Recommendation 6.26

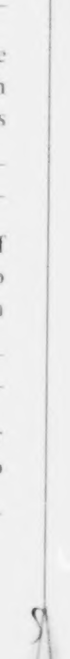
This Commission recommends that **Pine Grove Correctional Centre** continue and expand its work with community agencies to provide programming which addresses the distinct needs of women in prison institutions and that resources be available for them to do so.

Recommendation 6.27

This Commission recommends that consideration be given by the **Federation of Saskatchewan Indian Nations and Metis Nation - Saskatchewan** to develop and deliver programs dealing with the effect of parental incarceration on children and the corresponding stresses of separation and reunification of families.

Recommendation 6.28

This Commission recommends to **Corrections and Public Safety** that plans for reintegration into the community be created as soon as youth are admitted to youth facilities.



Recommendation 6.29

This Commission recommends that **all levels of government** immediately design and implement a funding strategy to fully resource the provisions of the *Youth Criminal Justice Act*, particularly those provisions that address community supervision of youth.

Recommendation 6.30

This Commission recommends that the **Government of Canada** appoint additional First Nations and Metis persons as members of the National Parole Board.

Recommendation 6.31

This Commission recommends that an evaluation of probation and community justice services be undertaken to ensure such services are meeting the needs of individuals and communities.

Recommendation 6.32

This Commission recommends that the options of alternative measures, bail, probation and conditional sentences be employed instead of the use of remand and incarceration wherever possible.

Recommendation 6.33

This Commission recommends that **Bail officers, Probation officers and Conditional Sentence Supervisors** be scheduled so that their services are available on a 24-hour basis.

CHAPTER 7 ELIMINATING RACISM: CREATING HEALTHY RELATIONSHIPS IN SASKATCHEWAN

Recommendation 7.1

This Commission endorses the report *Multiculturalism in Saskatchewan: Report to Ministers' Committee on Multiculturalism*. This Commission recommends that the **Executive Director of Saskatchewan Culture and Heritage**, report in writing to the Implementation Commissioner and shall clearly indicate progress made in carrying through the recommendations put forward in this Multiculturalism report.

Recommendation 7.2

This Commission recommends that the governments of Canada and Saskatchewan, specifically **Indian and Northern Affairs Canada and Saskatchewan Government Relations and Aboriginal Affairs**, in consultation with representatives from the **Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan**:

a) create a directory for Saskatchewan of First Nations and Metis people who are recognized and respected as trainers/facilitators on cultural awareness and the promotion of healthy relationships between the First Nations and Metis cultures and the non-Aboriginal population;

b) that the directory be made available to organizations, government departments, and members of the justice system wishing to provide culture awareness training to their employees; and,

c) that the list be reviewed and updated on an annual basis.

Recommendation 7.3

This Commission recommends that **media outlets in Saskatchewan** create an external community editorial board, including First Nations and Metis representatives, to review stories in the media and provide feedback to the producers and editors of stories on the portrayal of First Nations and Metis people.

Recommendation 7.4

This Commission recommends that the **Department of Culture, Youth and Recreation** take a lead role and work with other relevant government departments, agencies, and non-governmental organizations, along with representation from the First Nations and Metis communities, to coordinate and host an anti-racism conference to coincide with March 21, 2005, the annual day on which Saskatchewan supports the Elimination of Racism and the centenary of Saskatchewan. This conference should be offered by videoconference, wherever possible, to ensure northern communities can participate.

Recommendation 7.5

This Commission recommends that the **Saskatchewan Association of Rural Municipalities and Saskatchewan Urban Municipalities Association**, along with representatives from the **Government of Saskatchewan, Federation of Saskatchewan Indian Nations, and Metis Nation - Saskatchewan** establish a committee to coordinate anti-racism activities in the year 2005.

Recommendation 7.6

This Commission recommends that the **Government of Saskatchewan** design and implement a media campaign which includes the use of public service announcements, as much as possible, September 2005, with the assistance of First Nations and Metis people, to achieve the objectives below:

- provide all citizens of Saskatchewan an opportunity to reflect on the contributions of First Nations and Metis peoples over the last 100 years of this provinces' development;

- establish a broad-based understanding of how to build and maintain constructive and positive relationships among First Nations, Metis and non-Aboriginal people; and

- assist individuals and communities to identify and eliminate inequities and barriers based on racial and cultural differences.

This public education strategy must go beyond 2005 and must include an evaluation component.

Recommendation 7.7

This Commission recommends that **every person**, and especially those in leadership positions, make a commitment to eliminate racism where it is present in day-to-day life.

CHAPTER 8 CHILDREN AND YOUTH: REALIZING POTENTIAL

Recommendation 8.1

This Commission recommends that the **Government of Saskatchewan** initiate a study to determine the reasons for the high number of First Nations and Metis youth remanded to custody followed by a strategy to reduce these numbers by March 31, 2005.

Recommendation 8.2

This Commission recommends that the **Government of Saskatchewan** develop a mental health services plan to prevent and treat mental disorders among children and youth not involved in the youth justice system.

Recommendation 8.3

This Commission recommends that the **Government of Canada** meet its legal, fiscal and historical obligations to the education of First Nations people. This includes ensuring adequate funding for post secondary education and a commitment to engaging First Nations children and youth in achieving educational attainment both on and off-reserve.

Recommendation 8.4

This Commission recommends that the **partners in the Policy Framework for Saskatchewan's Education System** develop and deliver education outside the traditional school system to those not presently attending school between the ages of 6 and 16. This will require identification of these children and youth and subsequently finding creative means of ensuring their right to an education is respected.

Recommendation 8.5

This Commission endorses the direction of School^{Plus} but is concerned that without resources and a collaborative approach, School^{Plus} will not succeed. Therefore, it is recommended that the **Government of Saskatchewan** ensure that School^{Plus} is a priority and fully resourced.

Recommendation 8.6

This Commission recommends that **all urban municipalities** consider the need for transitional or orientation programs for First Nations and Metis youth who move from reserve or rural areas to the urban centres.

Recommendation 8.7

This Commission recommends that the **Government of Canada** consult with First Nations and Metis people to establish indicators of quality of life for 2004 for First Nations and Metis children in Saskatchewan's urban environments and that in 2009, these indicators be re-evaluated by investigating actions and initiatives undertaken to improve the quality of life of these children.

Recommendation 8.8

This Commission recommends that by April 1, 2005 the **Government of Canada** establish a Children's Advocate for Canada's First Nations and Metis children, reporting to Parliament, and accountable to First Nations and Metis people, with legislative authority to monitor and evaluate the impact of Canada's National Action Plan for Children, and be responsible to promote and protect the rights of First Nations and Metis children.

Recommendation 8.9

This Commission recommends that the **governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan**, in consultation with Saskatchewan's Children's Advocate, collectively review options to ensure that First Nations and Metis children, their families and their communities are afforded services and that advocacy services are provided in an accessible and culturally sensitive manner that respects their full human dignity.

Recommendation 8.10

This Commission recommends that **all governments** transcend jurisdictions in the best interest of our children and our collective futures by creating a Declaration that addresses relationships between jurisdictions and create long-term Saskatchewan First Nations and Metis Children and Youth Action Plan.

Recommendation 8.11

This Commission recommends that **all governments** collaborate to sign a Declaration and create long-term Saskatchewan First Nations and Metis Children and Youth Action Plans that transcend all jurisdictions in the best interests of our children and our collective future.

And that the Declaration be signed addressing the relationships between jurisdictions. The Saskatchewan First Nations and Metis Children and Youth Action Plans must involve First Nations and Metis youth, and all levels of government to create holistic Action Plans that must include social and capital infrastructure projects.

These Action Plans are based on the principles of inclusion of First Nations and Metis children and youth, integrated services, involved communities and future focused.

Recommendation 8.12

This Commission recommends that the **Implementation Commissioner** be vested with the power and authority to monitor the development and implementation of the Saskatchewan First Nations and Metis Children and Youth Action Plans.

Recommendation 10.1

This Commission recommends that **the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and the Metis Nation – Saskatchewan** be required to report to their respective legislatures within six months of the release of this report on what action it has taken relating to the recommendations contained in this report.

Recommendation 10.2

This Commission recommends that the **governments of Canada and Saskatchewan, the Federation of Saskatchewan Indians and the Metis Nation - Saskatchewan**, through discussions at a working group initiated by this Commission, jointly support and establish an Office of the Implementation Commissioner.

Recommendation 10.3

This Commission recommends that the Working Group consisting of **the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan** continue to meet regularly following the release of this final report. Their objective should be to lead the way in the creation of an Office of the Implementation Commissioner by October 1, 2005.

Recommendation 10.4

This Commission recommends that the **Implementation Commissioner** be an independent officer who has inter-jurisdictional authority and will annually report to the respective Legislative Assemblies through an identified mechanism (a standing committee, a council, regional body or commission).

Recommendation 10.5

This Commission recommends that the **Implementation Commissioner** is appointed, by agreement of **the governments of Canada and Saskatchewan, the Federation of Saskatchewan Indian Nations and Metis Nation – Saskatchewan** by April 1, 2005.

Recommendation 10.6

This Commission recommends that the **governments of Canada and Saskatchewan** share the cost of establishing and operating this office with the percentage to be negotiated by these two levels of government.

Recommendation 10.7

This Commission recommends that in addition to the authority to execute a defined mandate, that adequate resources be provided by the **governments of Canada and Saskatchewan,** to the Implementation Commissioner to establish an office and a process to receive advice from others to ensure that the work of the Implementation Commissioner remains future focused and accountable to the community.

12

SUMMARY OF RECOMMENDATIONS FROM PREVIOUS REPORTS

SUMMARY OF RECOMMENDATIONS FROM PREVIOUS REPORTS

COMMISSION INTERIM REPORT – A DIALOGUE IN PROGRESS: FOCUS ON YOUTH RELEASED JANUARY 15, 2003

Recommendation 2.1

That the recommendation contained in the Linn Reports asking for a citizens' complaint review mechanism be implemented.

Recommendation 2.2

In the interim, that funding for the Special Investigation Unit (SIU) be provided to ensure it is able to continue its work on behalf of First Nations and Metis people.

Recommendation 2.3

That Saskatchewan government, First Nations, the Metis Nation and the police work together to create a set of guidelines for the use of police and Crown discretion that ensures that First Nations and Metis youth will be diverted into culturally appropriate programs or services.

Recommendation 2.4

That the Government of Saskatchewan maintain the age of presumption at 16.

Recommendation 2.5

That clear and enforceable standards with regard to safe, fair and humane custody, as well as rehabilitation and reintegration, be adhered to and that an independent body be established to create the standards and monitor compliance. That body must include First Nations and Metis representatives.

Recommendation 2.6

That First Nations, Metis and the Saskatchewan government work together to develop a public education strategy to ensure greater knowledge and understanding of the YCJA.

Recommendation 2.7

That the deputy minister's steering committee on YCJA is expanded to include First Nations and Metis representation. This body needs to conduct a detailed analysis of the YCJA to highlight the potential opportunities and the concerns the legislation has for the program and service deliverers, the courts, the communities and the youth. They must continually monitor and evaluate the implementation of the YCJA.

Recommendation 2.8

That the segregation units of the Regina Correctional Centre, known as East G and West G, be closed immediately.

Serving Notice

In the long-term steps must be taken to foster healthy families and positive role models for youth. The Justice Reform Commission will continue to listen and discuss the issue of gangs and their impact on the young people of Saskatchewan. All levels of government must make the consequences of criminal gangs a priority for youth education.

COMMISSION INTERIM REPORT – WORKING TOGETHER RELEASED NOVEMBER 20, 2003

Recommendation 3.1

It is recommended that the Government of Canada, Government of Saskatchewan, Federation of Saskatchewan Indian Nations and Metis Nation-Saskatchewan respond to the Justice Reform Commission by December 15, 2003, with the actions taken in response to the recommendations of the Royal Commission on Aboriginal People.

See Chapter 13 for the responses to Recommendation 3.1

Recommendation 3.2

It is recommended that Saskatchewan Justice, together with Justice Canada, priorize the funding of community integrated justice initiatives, such as the proposed models for change.

Recommendation 3.3

It is recommended that Saskatchewan Justice, together with Justice Canada, support and include First Nations and Metis representation in the overall implementation of therapeutic courts such as domestic violence courts, addictions courts and Aboriginal courts.

Recommendation 3.4

The Commission recommends that Saskatchewan Justice and Justice Canada install cultural symbols in all courts in Saskatchewan to demonstrate the recognition and respect the courts have for the rich cultural heritage of First Nations and Metis people in Saskatchewan. The installation of these symbols should be carried out with the guidance of Elders and with respect for traditional beliefs. This gesture will serve to remind the courts and the public of the significance part First Nations and Metis people play in the social fabric of Saskatchewan and Canada.

Recommendation 3.5

It is recommended that integrated case management become an integral part of the service delivery of every human service department or agency of the Government of Saskatchewan.

Recommendation 3.6

It is recommended that a Working Group be established immediately to be comprised of representatives of the Government of Canada, Government of Saskatchewan, First Nations and Metis governments in Saskatchewan. A Commission representative will chair the group whose task is to recommend an implementation vehicle by December 1, 2003, taking into account all relevant documentation as a basis for discussion.

Recommendation 3.7

It is recommended that an Implementation Vehicle come into effect immediately following the release of the Justice Reform Commission's final report.

Response to Interim Report

Working Together – Recommendations 3.1

13

CONSEIL DES
HAUT FONCTIONNAIRES
FÉDÉRAUX DE LA SASKATCHEWAN

SASKATCHEWAN
COUNCIL OF SENIOR
FEDERAL OFFICIALS

February 3, 2004
Mr. J. Wilton Littlechild, O.C., Q.C., I.P.C.,
Chair - Commission on First Nations and Métis People and Justice Reform
# 802 - 119 Fourth Avenue South
Saskatoon, SK
S7K 5X2

Dear Mr. Littlechild:

Further to my letter of January 9, 2004, I am writing to provide information about Saskatchewan activities undertaken by the Government of Canada in response to recommendation 3.1 of the November 20, 2003 interim report of the Commission on First Nations and Métis People and Justice Reform:

> *It is recommended that the Government of Canada, Government of Saskatchewan, Federation of Saskatchewan Indian Nations and Métis Nation of Saskatchewan respond to the Justice Reform Commission by December 15, 2003, with the actions taken in response to the recommendations of the Royal Commission on Aboriginal People.*

The Government of Canada's response to the Royal Commission on Aboriginal People was contained in Gathering Strength – Canada's Aboriginal Action Plan, issued on January 7, 1998. The information contained in this letter is not intended to be a comprehensive list of *Gathering Strength* initiatives, but rather it identifies some activities that federal departments are undertaking to address the social, economic, health and educational concerns of Aboriginal people in Saskatchewan.

Reconciliation

Gathering Strength contained a *Statement of Reconciliation*, which established the foundation for a new relationship with Aboriginal people.

The *Statement of Reconciliation* acknowledged the negative legacies of certain historical decisions made by the Government of Canada. It spoke to the pain many Aboriginal people experienced as a result of the Residential School system, the events culminating in the death of Louis Riel. In addition, the Government of Canada apologized for its role in the suffering of Canada's Aboriginal peoples.

The Government of Canada committed $350 million to an Aboriginal Healing Foundation, a non-profit corporation run by Aboriginal people. This Foundation supports community-based healing initiatives for Aboriginal individuals suffering from the legacy of sexual and physical abuse in the Residential School system.

The Federation of Saskatchewan Indian Nations (FSIN), the Office of the Treaty Commissioner (OTC), and the Government of Canada have initiated discussions (with the Province of Saskatchewan participating as an observer) to explore the treaty relationship. These discussions recognize that any new relationship must be respectful of the treaty relationship. To date, the OTC has published a number of reports and publications, and has also developed curriculum materials on treaties that are being used in Saskatchewan schools.

Canada

Saskatchewan Council of Senior Federal Officials
620, 2220 - 12th Avenue; Regina Saskatchewan; S4P 0M8 Tel 306-780-5205

Building a new relationship

Under Indian and Northern Affairs Canada's (INAC) *Governance Initiative*, 19 pilot projects have been approved in Saskatchewan. These projects enable First Nations communities to develop and implement practical approaches and tools leading toward local governance of resources and programs.

The Department of Canadian Heritage *Aboriginal Women's Program* supports the participation of Aboriginal Women in self-government processes. The Department also supports the Métis Nation - Saskatchewan and Congress of Aboriginal People through its *Aboriginal Representative Organizations Program*.

Canada is currently negotiating two self-government arrangements in Saskatchewan: the *Saskatchewan Common Table* and the Meadow Lake Tribal Council (MLTC) *Self-government Initiative*. Successful negotiations at both tables will result in all First Nations in Saskatchewan having the opportunity to enter into self-government arrangements with Canada and the Province of Saskatchewan.

On July 17, 2003, an important milestone was achieved at the *Saskatchewan Common Table* when the negotiators initialled an Agreement-in-Principle (AIP) with Canada and a Tripartite AIP with both Canada and Saskatchewan. First Nations' Chiefs and Councils have been asked to work with their membership to review the agreements.

On January 22, 2001, an equally important milestone was achieved as part of the MLTC *Self-Government Initiative*. A Comprehensive AIP was signed by the MLTC and the Government of Canada, along with an accompanying Tripartite AIP including the Province of Saskatchewan.

The Government of Canada recognizes that the response to the issues before Aboriginal Canadians today requires initiatives in many areas: from improving educational opportunities and working with Aboriginal organizations to develop new training opportunities, to contributing to the health and public safety of Aboriginal Canadians by focusing on health promotion and programming, housing, justice, and community and economic development.

Over the last decade, Human Resources Development Canada's policy regarding program design and delivery for Aboriginal peoples has evolved from a non-participatory approach to one in which Aboriginal authorities and communities have full responsibility for program design, delivery and results. This evolution included the Aboriginal Human Resource Development Strategy (AHRDS), which was given a five-year, $1.6 billion budget nationally of which includes over $40-million per year in Saskatchewan. The AHRDS has assisted Aboriginal communities and organizations to take on full local responsibility for labour market planning, and has resulted in a corresponding growth in effective public administration, completion of training interventions, employment results and savings to income support programs. The fundamental focus of the AHRDS is to help Aboriginal communities strengthen the ability of Aboriginal people to compete in the Canadian job market, including enabling Aboriginal groups to design and deliver a wide range of human resource programming.

In Saskatchewan, Indian and Northern Affairs Canada has been working with First Nations in their quest to have greater participation of Aboriginal people in the economy. The *Community Economic Development Program*, *Resource Partnerships Program*, *Resource Partnerships Program*, *Regional Partnership Fund* and *Major Business Projects Program* have all been developed to enable First Nations to improve the economic lives of First Nations people in Saskatchewan. In Saskatchewan, INAC's *Opportunities Fund* and the *Resource Acquisition Initiative* has contributed to 220 projects over the past five years, creating 973 full-time and part-time jobs, and reducing social dependency and unemployment.

In 1998, the federal government rolled out its *Urban Aboriginal Strategy* (UAS) to improve policy development and program coordination at the federal level and among other levels of government. Although this initiative had no program dollars attached to it in its early stages, it served to stimulate dialogue and discussion on how the federal government might be more effective in supporting field level efforts aimed at addressing the needs of urban Aboriginal people. These preliminary discussions proved to be very significant in increasing awareness of the circumstances of Aboriginal people, and mobilized all levels of government to work more collaboratively on many different fronts, including the establishment of forums where Aboriginal community members could voice concerns and participate in the setting of priorities at a local level. More was needed, however, and in 2002, the Government reaffirmed its commitment and allocated $4.5 million over three years for pilot projects in Regina and Saskatoon. The government also set out some specific objectives: to employ horizontal mechanisms, align federal programs on the ground to respond to local priorities, test innovative ideas, gain better understanding of what does and doesn't work and ultimately to improve the socio-economic conditions facing urban Aboriginal Canadians. To date, two pilot cities (Regina and Saskatoon) have been identified to undertake pilot projects under the UAS:

The Regina Inner City Community Partnership (RICCP) has been created to function as a multi-sectoral forum. Its membership includes representatives from Aboriginal organizations and from federal, provincial and municipal governments. The RICCP has funded a community development action plan for North Central Regina that includes three key projects:

> "Moccasin Flats" is a six-episode dramatic television series focusing on the realities of life in Regina's inner city. Pilot funding has supported the opportunity for Aboriginal youth to participate in and develop skills in television production. This project directly reflects the RICCP priority of increasing opportunities for Aboriginal youth linked to economic growth areas.
>
> The Regina and area Drug Strategy Coordinator position was funded to support a strategy developed through a partnership of federal, provincial, municipal departments, school boards, Aboriginal organizations, including File Hills Qu'Appelle Tribal Council, Métis Addictions Council of Saskatchewan and Treaty Four Urban Services and other community groups. The goal of the strategy is to improve the quality of life for citizens and provide a healthier and safer community by reducing the impact of addictions.
>
> A Community Facilitator position was funded to support the implementation of North Central Community Partnership action plan, ensuring the voice of the community continues to be heard and ensuring action on the part of the stakeholders.

The Saskatoon UAS initiative is still in early stages of development. The focus is to engage the Aboriginal community to determine needs and priorities. The initiative will be led by an advisory committee, comprised of representation from the three levels of government, Aboriginal groups and individuals (First Nations and Métis). Specific projects and funding decisions will be guided by a steering committee comprised of First Nations and Métis people.

Linked to the Urban Aboriginal Strategy is a component of the Government of Canada's National Homelessness Initiative. This component is the Urban Aboriginal Homelessness (UAH) Initiative - important since about 50 percent of the Aboriginal population live in urban centres. The UAH specifically strives to reduce the disparity between Aboriginal and non-Aboriginal people in urban settings. It provides flexibility to enable Aboriginal organizations and other partners to find local solutions to the complex issues, enhances the capacity of Aboriginal organizations to participate in broader community processes, and brings culturally sensitive services into play.

Examples of projects funded under the UAH initiative include:

The development of 10 transitional housing facilities through a partnership among the Federation of Saskatchewan Indian Nations, the Saskatchewan Indian Training Assessment Group, five Tribal Councils (Prince Albert Grand Council, Saskatoon Tribal Council, Yorkton Tribal Council, Battlefords Tribal Council, and Regina Treaty Status Indian Services) and the Government of Canada.

Infinity House, a supportive housing facility operated by Central Urban Métis Federation Inc. in Saskatoon, serves Aboriginal women and their children who are homeless or at risk of becoming homeless.

The Department of the Solicitor General Canada (Public Safety and Emergency Preparedness Canada), through its Aboriginal Policing Directorate, implemented the *First Nations Policing Policy* (FNPP) in 1991. The FNPP is a policy document, which provides the mechanism for the funding of tripartite agreements. In Saskatchewan, the FSIN is a signatory to this Framework Agreement. The FNPP was revised in 1996, and serves to ensure that police services are responsive to First Nations cultures and needs (i.e. communities should be policed by police officers of similar cultural and linguistic background). This policy is founded on a legislative framework that enables First Nations to establish, administer and regulate their own police services and to appoint police officers, consistent with provincial norms and practices. In the last year, 103.5 police officers (Royal Canadian Mounted Police First Nations Community Policing Service - RCMP FNCPS) have functioned within this framework. The officers employed in these positions are to be of Aboriginal ancestry. In 1999, the first transitional *Self Administered Police Service* began with 6 officers of the RCMP FNCPS (including a Chief of Police), which will transition to the *File Hills First Nations Police Service.*

The *Aboriginal Justice Strategy* (AJS) is an example of how provincial and federal governments are working in partnership with Aboriginal communities. Although the administration of justice is primarily a provincial responsibility, Saskatchewan and Canada have been able to set aside jurisdictional boundaries in order to deliver community-based justice programming allowing Aboriginal communities to take responsibility for the administration of justice both on and off reserve. AJS programs, which are cost-shared on a 50-50 basis with Saskatchewan, provide funding to deliver programs, which offer alternatives to the mainstream justice system for Aboriginal people in a manner that is culturally appropriate. . The AJS provides funding for 22 Aboriginal community-based justice programs. The majority of these programs are targeted towards youth, helping them understand the consequences of their actions, take responsibility for them and ultimately repair the harm that has been done.

Canadian Heritage's *Urban Multipurpose Aboriginal Youth Centre (UMAYC)* initiative has been a significant success in Regina, Saskatoon and Prince Albert, with hundreds of Aboriginal young people benefiting from youth-oriented services and activities. Youth who may have not been successful in other programs are now making progress because of the flexibility, the cultural foundation and the accessibility of the program to the most at-risk group of young people. The department sought to engage Aboriginal youth is such a way that the youth determined the needs and priorities through *Aboriginal Youth Advisory Committees* in each of the cities. All funding decisions have been guided by the recommendations made by the youth.

Between 1999 and 2001, the UMAYC initiative supported approximately 85 projects in Regina, Saskatoon, and Prince Albert. A very successful UMAYC project is the Saskatoon Tribal Council White Buffalo Youth Lodge. The lodge delivers a range of services to youth in all situations, from post-secondary students looking for employment to those at risk of entering the negative street lifestyle. Other successful projects include Common Weal Community Arts and New Dance Horizons in Regina, that enable youth to express themselves through acting, writing and dance; and the Youth Literacy Project at the Prince Albert Integrated Youth Centre.

Canadian Heritage provides funding to Aboriginal organizations to help preserve and teach Aboriginal languages and culture. Missinipi Broadcasting Corporation – A LaRonge based Aboriginal radio communications group has been supported, in part, by funding provided through the department's *Northern Native Broadcast Access Program* and has provided radio broadcasting in both Cree and Dene.

Health Canada's *Aboriginal Head Start* program has reached on-reserve communities through locally controlled and designed early intervention strategies (including parent advisory committees) that instil a positive sense of self and desire for learning in Aboriginal preschool children. In 2002-2003, 78 communities were involved in *Aboriginal Head Start*.

Summary

As departments strive to adhere to the spirit of *Gathering Strength*, progress has been made in effecting positive changes in attitudes and responses among staff; many departments have now implemented employee awareness programs desired to educate staff about Aboriginal issues and familiarize them with Aboriginal culture, history and integral contribution Aboriginal people have made and will continue to make in Canada. Departments are acknowledging the value and contributions of Aboriginal people and culture and integrating these in several ways.

For example, Correctional Services of Canada (CSC) has partnered with First Nations communities to establish two Healing Lodges for federal offenders: *Okimaw Ohci Healing Lodge for Women*, located at Nekaneet First Nation; and the *Prince Albert Grand Council Spiritual Healing Lodge*. The *Willow Cree Healing Lodge Natawihokamik*, on the Beardy's and Okemasis First Nation is currently in the early stages of development.

The Saskatchewan Federal Council identified a strategic objective to improve socio-economic circumstance for Aboriginal peoples in Saskatchewan in the late 1990's. In April 2002, this objective led the Council to make significant changes to its structure by creating the *Regional Partnering Strategy – Aboriginal Initiatives* as a platform upon which broader government issues related to Aboriginal people in Saskatchewan could be addressed in a strategic way that encourages partnership and collaboration. The Council's regular discussion of Aboriginal issues led to a unique forum, in December 2003, in which Aboriginal leaders and provincial officials could collectively discuss issues with Council members.

Several Government of Canada departments have also realized the power of diversity through increasing their complement of Aboriginal staff. Indian and Northern Affairs Canada's staff complement in Saskatchewan is 50 percent Aboriginal.

I hope you find this information useful and informative. If you have any questions, comments, or concerns, please contact me.

Sincerely,

George Cornwell,
Executive Director - Saskatchewan Federal Council
Director General - Regional Partnering Strategy - Aboriginal Initiatives

Saskatchewan

Government Relations and
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Deputy Minister

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February 19, 2004

Mr. J. W. Littlechild, Chair
Commission on First Nations and Métis
Peoples Justice Reform
802 – 119 - 4th Avenue South
SASKATOON SK S7K 5X2

Willie

Dear Commissioner Littlechild:

In your interim report of November, 2003, there was a request for a report from Saskatchewan, FSIN, MNS, and Canada, on actions taken in response to the recommendations of the Royal Commission on Aboriginal People. In subsequent meetings, the Province indicated it would provide a response. The Province provided such a response related to the justice system in a February 4th letter to you from Mr. Doug Moen, Deputy Minister of Justice and Deputy Attorney General. To complement this information, I am pleased to enclose the following entitled, *Discussion Paper: Provincial Response to the Royal Commission on Aboriginal Peoples – Strategic Directions.*

This Discussion Paper is not intended to respond to specific recommendations of RCAP. Rather, it briefly describes the strategic directions of the Province that coincide with, and respond to, many of the key subject matters covered by RCAP. In doing so, it demonstrates the Province's commitment improve the well being and quality of life for Aboriginal people. The Province can not do it alone. Effective partnerships with First Nations and Métis people, the federal government, private sector and other stakeholders are prerequisites for success.

I hope this information will be of assistance.

Sincerely,

W. Brent Cotter, Q.C.
Deputy Minister
Government Relations
and Aboriginal Affairs

Attachment

cc: Doug Moen, Deputy Minister of Justice and Deputy Attorney General
Hal Cushon, Acting Deputy Minister, Agriculture, Food & Rural Revitalization
Bonnie Durnford, Deputy Minister, Community Resources and Employment
Angie Gélinas, Deputy Minister, Culture, Youth and Recreation
Lily Stonehouse, Deputy Minister, Environment
Ron Styles, Deputy Minister, Finance
Glenda Yeates, Deputy Minister, Health
Larry Spannier, Deputy Minister, Industry and Resources
Jim Nicol, Acting Deputy Minister, Labour
Craig Dotson, Deputy Minister, Learning
Glenn McKenzie, Acting Deputy Minister, Northern Affairs
Wynne Young, Chair, Public Service Commission

Without Prejudice
Prepared by Government Relations and Aboriginal Affairs
Province of Saskatchewan
February, 2004
For the Commission on First Nations and Métis Peoples Justice Reform

DISCUSSION PAPER

PROVINCIAL RESPONSE TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES – STRATEGIC DIRECTIONS

1. INTRODUCTION

After consulting widely with Aboriginal people in Canada, the Royal Commission on Aboriginal Peoples (RCAP) presented 454 recommendations in 1996 to the federal, provincial and municipal governments, Aboriginal organizations, post-secondary education institutions, major third parties, and the media. RCAP was important in advancing the public discourse and providing a context to focus public policy on the Aboriginal front.

The provincial government took RCAP's work very seriously. In early 1997, the provincial government undertook a thorough review of all of the recommendations and their potential impact on the province. In this regard, the Province also looked to Canada for leadership given the Province's position that Canada has legislative responsibility and treaty, constitutional, and fiduciary obligations to all Aboriginal people, whether or not they reside on or off reserve. However, Canada does not share that view.

The province extends programs of general application to First Nations and Métis people, regardless of residency, in circumstances where these programs and services are not already provided by the federal government. However, as a matter of public policy, the province has developed targeted initiatives to benefit First Nations and Métis people. Included in the development of targeted initiatives, the province considers, in its analysis, the overall benefit to the province, whether federal cost sharing is available and whether the province would retain authority for the expenditure of public funds.

This was the context of provincial initiatives in support of First Nations and Métis people before RCAP and in developing the provincial response to RCAP. The following is not intended to respond to specific recommendations, but rather to briefly describe the strategic directions of the Province that coincide with, and respond to, many of the key subject matters covered by RCAP.

On justice specific recommendations, the Deputy Minister of Justice has provided an overview of how Justice responses align with the recommendations made by the Royal Commission under their earlier report on "Bridging the Cultural Divide". This, along with the discussion paper provided to the Commission on First Nations and Métis Peoples Justice Reform by Saskatchewan Justice and Saskatchewan Corrections and

Public Safety in their joint submission, provides an overall context to understanding the department's Aboriginal Justice Strategy.

In addition, other provincial departments made submissions to the Commission about their respective areas.

2. FIRST NATIONS SELF-GOVERNMENT PROCESSES IN SASKATCHEWAN

Context

For over one hundred and thirty years, authority has been exercised over First Nations people and communities by the federal government through the reserve system and the framework of the *Indian Act,* laws and regulations. Within limits, it is generally recognized that the greater authority people have over their own lives and communities, the greater the chance that their lives will be bettered and their communities strengthened.

During the constitutional negotiations towards what was known as "the Charlottetown Accord", the Government of Saskatchewan supported constitutional amendments that would have recognized an inherent right of self-government of Aboriginal people. When the Accord was defeated in the referendum, Saskatchewan made the policy decision to participate in self-government negotiations within the existing framework of Canada's Constitution. This view was reinforced by Mr. Justice Rene Dussault, who co-chaired the Royal Commission on Aboriginal Peoples, when he stated this inherent right would be implemented through negotiations in appropriate circumstances.

This provides the context upon which Saskatchewan agreed to participate in two sets of Aboriginal self-government negotiations – with Canada and the nine First Nations comprising the Meadow Lake Tribal Council (in 1996); and with Canada and the seventy-plus bands represented by the Federation of Saskatchewan Indian Nations (in 1997). The latter is essentially a set of negotiations with all, or virtually all, of the First Nations of Saskatchewan.

Meadow Lake Tribal Council (MLTC)

The first practical implementation of the provincial self-government policy framework involved the Meadow Lake Tribal Council (MLTC). Saskatchewan has been involved in self-government negotiations with MLTC and the federal government since 1996.

On January 22, 2001, Canada, Saskatchewan and seven of the nine Meadow Lake First Nations signed agreements-in-principle and committed to negotiations towards final agreements to set up arrangements for on-reserve self-government.

The Parties are working on two agreements. The main agreement will be bilateral - between the First Nations and the federal government. That agreement will contain the details of the self government arrangements. The second agreement will include all three parties and is intended, generally, to be the means by which Saskatchewan formally accepts and recognizes the self government regime. It will also provide for the ongoing relationship among the Parties, the harmonization of laws, programs and services and other matters of specific interest to the Province.

Having two separate agreements with the main agreement being bilateral ensures that the primary relationship remains between Canada and the First Nations. This ensures consistency with the historical, treaty and constitutional relationship between Canada and First Nations. This approach is also taken at the FSIN Table.

Related to the self government negotiations, Saskatchewan is also involved with Canada and MLTC in negotiations related to "traditional territories" and "non-resident citizens". These negotiations are to address the interests of the Parties in lands outside of reserves to which the Meadow Lake First Nations have a historical connection. The negotiations are also intended to deal with matters having to do with the design and delivery of programs and services to members of the Meadow Lake First Nations who live in the province but off reserve. Currently, the parties are putting together a "Framing Agreement" which will set out the details of how the negotiations will be undertaken.

Federation of Saskatchewan Indian Nations (FSIN)

The Protocol Agreement to Establish a Common Table among Canada, Saskatchewan, and the FSIN was signed in October 1996. This led to the establishment of the Fiscal Relations Table in 1997 and Governance Table in 1998. In 2000, the Parties signed a document entitled *Framework for Governance of Treaty First Nations* as the basis to enter into substantive negotiations on a range of sectors beginning with education and child and family services.

In July of 2003, negotiators agreed to the wording in a proposed Agreement-in-Principle (AIP), between FSIN and Canada, and a proposed Tripartite Agreement-in-Principle (TAIP), between FSIN, Canada and Saskatchewan, subject to approval by their respective principles. If approved, they would set the agenda and next steps for future work at the negotiating table.

The AIP is intended to establish the agenda for negotiating the Governance Agreement, which will be the main self-government agreement. The Governance Agreement will set out First Nations jurisdiction on First Nations lands and will contain definitions, governance, fiscal and relationship of laws provisions, structures and processes, with a focus on education and child and family services sectors. The sectors require the aggregation of jurisdiction to a province-wide First Nations Government to enact province-wide laws on-reserve with respect to the education and child and family services sectors. This must also be reflected in First Nations' constitutions.

The TAIP establishes the agenda for negotiating the Tripartite Agreement, which would allow the Province to formally recognize the First Nations government's law-making authority established in the Governance Agreement and to work with First Nations governments in areas like education and child and family services. The purpose of the Tripartite Agreement is to facilitate the co-ordination of laws, programs and services as contemplated in the main self-government agreement (Governance Agreement). It will provide for the ongoing government-to-government and day-to-day working relationship with the Province.

The current round of negotiations has focused on self-government on-reserve in education and child and family services. Other sectors noted in the AIP and TAIP for future negotiation include: lands and resources; hunting, fishing, trapping and gathering; health; and housing, but would require approval of the principals to proceed.

It is also recognized that in certain circumstances, the law governing a First Nations person, even off the reserve may need to be the First Nations law and not the law of some other government. So, for example, under one potential scenario, an adoption law of a First Nation may in certain cases apply to First Nations persons living in our cities. Within limits, Saskatchewan is open to exploring this matter where it is central to First Nations identity and culture, and where the off-reserve First Nations person consents to be governed by the First Nations law. However, the exploratory discussions to date have been very preliminary and inconclusive as these are subject matters for a second round of negotiations in the area of education and child and family services.

Good Governance and a Sound Financial Base

For negotiations at the MLTC and FSIN Tables to be successful, good governance and a sound financial base are the two important areas that must be fully dealt with in any final agreement.

(a) Good governance

A major objective of the self-government processes is the development of effective and efficient governance structures for First Nations. The current legal framework for First Nations' governance is provided by the federal *Indian Act*. The Act has been described as paternalistic and a significant impediment to economic development on Indian reserves.

International experience and literature concerning good governance conclude that the following characteristics are necessary for effective governing capacity and a prerequisite to successful social and economic development:

- law-making authority, with all men and women having a voice in decision-making, especially at the local level;
- stable institutions, policies and processes, that are efficient and effective and seek to serve all stakeholders;

- transparency and accountability to citizens;
- fair and effective dispute resolution, including provision for redress, based on respect for the rule of law;
- separation of politics from business management and day-to-day public administration;
- a professional bureaucracy, with hiring and promotions based on merit, and adequate compensation; and
- a cultural match of the governing institutions to the society they serve.

Prior to the implementation of self-government, each First Nation must develop a written constitution that will create a proper foundation for nation building. This will include such matters as ensuring the government is democratically accountable to its electorate, setting out rights of appeal for persons affected by government decisions and describing the election process and the terms of office for members of the government.

(b) A sound financial base

A sound financial base is essential for any government to be able to function properly. The funding of programs and services benefiting First Nations in Saskatchewan is a complex matter and has been an issue of contention for many years. Generally speaking, Canada pays for most on-reserve costs and Saskatchewan pays for most off-reserve costs.

Saskatchewan is of the view that the federal government is responsible for the funding of programs and services to Indian people regardless of residency and Canada is expected to pay any increased costs associated with self-government. Saskatchewan has entered the negotiations with a policy that contends whatever fiscal arrangements are concluded must be fiscally neutral to the province. The Province is committed to creating economic and employment opportunities for First Nations people, both within and outside the self-government processes, and looks to Canada for a meaningful and significant role.

All of the parties are committed to a regime that secures sound financial management, accountability requirements, and fiscal equity and comparability. Elements of this dimension include the capacity for First Nations Governments to raise their own revenues and a long-term resolution of the issue of taxation of First Nations people.

Conclusion

Negotiations at the MLTC and FSIN Tables are conducted in the spirit of good-will and co-operation. The objective is to achieve self-government agreements that serve the interests of all Saskatchewan residents, First Nations and non-First Nations people alike.

The government of Saskatchewan believes self-government is not about taking anything away from anyone, nor is it about giving anything back, it is about recognizing a right which was always there. And it is about empowering a people, legally and spiritually, to take control of their own destiny. Clearly, the future of Aboriginal people will define a large part of the future of Saskatchewan as a whole. First Nations self-government is an important element in the equation for success.

3. THE MÉTIS

Context

The Métis, one of the aboriginal peoples as defined in the *Constitution Act 1982*, have played a pivotal role in the development of Canada as a nation and Saskatchewan as a province. The Government of Saskatchewan recognizes the distinct history, culture and aspirations of Métis people. Since the opening of the west for settlement by Europeans and the formation of the province, the Métis and their communities have been affected by federal and provincial legislation and policy.

Public policy generally recognizes that the greater authority people have over their own lives and communities, the greater the chance that their lives will be bettered and their communities strengthened. For Saskatchewan, this recognition suggests a need to collaborate with Métis to address the significant social and economic pressures facing Métis people, and to enhance the governance and institutional capacity of Métis organizations in the province.

The Province is also guided by decisions of the courts that confirm and contextualize what "existing aboriginal rights" are Métis rights within the meaning of section 35 of the *Constitution Act, 1982*. The Province continues to work with Métis people to coordinate policy and develop co-management regimes in responding to a recent Supreme Court of Canada ruling regarding Métis hunting rights in Canada.

The Province continues to work with Métis people to enhance the governance capacity of Métis institutions through such things as cultural recognition legislation, transfers of certain historic heritage lands (such as those at Lebret and those intended at Palmbere), enhanced co-management arrangements in northern Métis communities, social program delivery accords with regional authorities and government departments, and enhanced economic development through the Métis Development Fund.

The Métis Act

The creation of legislation to recognize the contributions of the Métis people in Saskatchewan began in 1991. The Government confirmed provincial interests with the Métis Nation – Saskatchewan (MNS), and negotiations toward a draft Métis Act began in 1997. Consultations with the Métis community were completed that year. Bill 42, an Act to recognize contributions of the Métis and to deal with certain Métis institutions

(*The Métis Act*) was introduced into the Legislature on May 29, 2001, and received Royal Assent on July 6, 2001. It was proclaimed on January 28, 2002.

The Métis Act gives the Province an opportunity to celebrate the historic and contemporary cultural and economic contributions Métis people have made and will continue to make in our Province and country. It also enables the Métis Nation - Saskatchewan Secretariat Inc., and its subsidiaries, to do business outside of T*he Non-profit Corporations Act, 1995*; and formalizes a commitment to negotiate practical, non-rights based issues and enhanced opportunities, such as capacity development, land, harvesting and governance, under the Bilateral process.

The same day the Act was proclaimed, the Province and the MNS entered into a Memorandum of Understanding which serves as the vehicle to bring aspects of *The Métis Act* to life. The MOU provides an opportunity for the MNS and the Province to actively pursue practical, non-rights based initiatives in the areas of governance, land, harvesting, and capacity building.

This legislation and MOU provide the building blocks for the Province's future relationship with Métis in Saskatchewan. Both the Province and the MNS are currently working to develop respective visions for our future relationship. The MNS is in the process of consulting with Métis citizens across Saskatchewan to identify and set priorities. The Province awaits this input and continues to work with other departments to establish its own priorities that will build on the MNS/Saskatchewan relationship.

The Métis Act and MOU, and the Province's well-established relationship with the MNS will be the primary vehicles to engage Métis people and organizations in Saskatchewan's social and economic structure.

Bilateral Process

Saskatchewan has a number of service agreements with Métis organizations to deliver programs and services in Saskatchewan. Building on these relationships, the Province of Saskatchewan and the MNS entered into the *Bilateral Process Agreement* in June 1993 to foster and maintain a constructive relationship. This process was undertaken to provide a forum to discuss issues of mutual concern, including policy and program matters and joint strategies to assert federal funding and jurisdiction for Métis people.

The Bilateral process has been successful in assisting the MNS with entering into agreements and arrangements with other provincial departments, such as:

- The establishment of the Métis Development Fund (Clarence Campeau Development Fund);
- Development of *The Métis Act* legislation and associated MOU;
- Establishment of the MNS/Saskatchewan Environment Task Force and funding to the MNS for a Lands/Resources Coordinator;
- Discussions with the Department of Community Resources and Employment around capacity building and Métis service delivery; and

- Involvement opportunities for Métis through the Aboriginal Employment Development Program partnerships

Tripartite Process

The Province has been working with Métis people, through the Métis Nation – Saskatchewan (MNS), and the federal government, through a Tripartite Memorandum of Understanding, to address the complex issues facing Métis people in Saskatchewan. The Province looks to the federal government for leadership, given its primary fiduciary, jurisdictional, constitutional and financial responsibilities to Métis people.

In 1993, Saskatchewan signed a *Tripartite Process Framework Agreement* with the MNS and Canada. This Tripartite process has been a vehicle to bring the federal government to the table to address Métis issues, implement practical initiatives and explore governance. Currently, activities include governance-related initiatives involving research, consultations and planning for Métis governance in the north, urban, rural and provincially, and how these governance initiatives may intersect.

While recognizing and acknowledging Métis aspirations and the central role the federal government must play in this process, the Province seeks to maximize Métis governance and self-reliance where possible. Increased empowerment and capacity building through service delivery agreements for social, justice and housing programs, exploration of Métis governance models in Saskatchewan communities and the negotiation of a program to jointly manage hunting and fishing resources in Saskatchewan's northwest are directions the Province and Métis people are pursuing.

Conclusion

The Government of Saskatchewan believes that the future of the province includes vibrant and successful Métis people and communities. The Province, in collaboration with the federal government and the MNS through the Tripartite process, serves to develop workable Métis governance models and agreements for Métis communities and institutions. Under the Bilateral process, the province fosters and maintains a positive, working relationship with the MNS through a variety of policy fora.
Clearly, the future of Métis people will define a large part of the future of Saskatchewan as a whole.

4. THE MÉTIS AND OFF-RESERVE FIRST NATIONS STRATEGY

Context

As part of the provincial review of RCAP in 1997, the Province also undertook a statistical profile of Aboriginal people using the 1996 Census data as well as a review of existing programs and services for Aboriginal people. It was determined that a focused approach was required in working with Aboriginal people in Saskatchewan. This led to the Métis and Off-Reserve First Nations Strategy (MOR). The MOR Strategy is a practical and comprehensive response to address the pressing needs of Aboriginal people in the province, in spite of the provincial view that responsibility for Aboriginal people, both on and off of the reserve lies with the federal government.

Aboriginal Participation

The strategy has been based on advice of Aboriginal people in our communities through two extensive sets of province-wide consultations – truly building from the outside-in.

For the first time in Saskatchewan, the provincial government engaged Aboriginal and non-Aboriginal people in a comprehensive way in the development of Aboriginal policy. This involved reaching and obtaining the support of provincial and regional Aboriginal political organizations, most notably the Métis Nation - Saskatchewan, the Federation of Saskatchewan Indian Nations, and most importantly, Aboriginal people living in urban centres.

Consultations took place throughout 1999 and early 2000. People told the Province what their needs were -- what their expectations were -- and what they thought the government could do to help. The priorities advocated by communities were for job creation, work preparation, keeping children in school, engaging Aboriginal youth in culture and sports, and improving the well-being of Aboriginal people.

Twelve government departments were involved in considering the outcomes of community discussions, crafting a policy framework and integrating the initiatives in a comprehensive action plan.

Vision, Goals and Priorities

The Strategy sets out a vision -- *meaningful change in the lives of aboriginal people over a period of one generation*. That means taking new innovative approaches both short-term and long-term to have a chance of meeting this goal.

Based on community feedback, priorities were identified and distilled into four goals which became the framework for the Strategy:

- Enhance success in education for Métis and off-reserve First Nations people.
- Prepare Métis and off-reserve First Nations people to participate in a representative provincial workforce.
- Ensure representative workforce participation and increase their participation in the economic life of the province.
- Improve individual and community well-being of Métis and off-reserve First Nations people.

This strategy is our practical agenda for strengthening Aboriginal people and communities in our province. It complements and supports a parallel strategy related to the negotiation of Aboriginal self-government in Saskatchewan. Together the two strategies constitute the four pillars of our objectives with and for Aboriginal people:

- Social health
- Economic prosperity
- Greater autonomy
- Greater fiscal and political accountability

Concrete Action and Performance Measures

The MOR translates into concrete action with the Province spending over one hundred million dollars annually for a broad range of programs, services and other initiatives in support of Aboriginal people. This includes Aboriginal-specific programs and services or specific components of general programs where Aboriginal people are the major recipients of the service. Aboriginal expenditures in programs of general applications such as insured health services, education grants, etc. are excluded from the Strategy.

This Strategy includes a comprehensive set of performance measures to track progress towards achieving goals and objectives and ultimately the Strategy's vision within one generation, or 20 years. Data sources to track progress include the Statistics Canada Population Census (every 5 years), Aboriginal Peoples Survey (every 10 years), annual program-based information, and institutional reports. Specific examples of performance measures follow for each Goal of the Strategy. Every year, the MOR Strategy's action plan is reviewed from a critical perspective by the interdepartmental team to impose discipline, and ensure initiatives fit with the Strategy's challenging targets and timelines. This process is key to ensuring the Strategy remains on target and on track.

With respect to education, our objective is to increase the success of Métis and off-reserve First Nations students in the provincial school system in 10 years.

Some of the performance measures include:
- Increase high school retention,
- Reduce the gap between Aboriginal and non-Aboriginal high school completion rates, and,
- Reduce the gap between Aboriginal and non-Aboriginal students in the number of course credits attained.

The Province's second goal is to prepare Aboriginal people for work. A key objective of which is to ensure Aboriginal youth make the transition from school to employment and training at rates similar to those for other people in the province in 10 years. Our performance measures include:
- Increase transition rates to post-secondary education for Aboriginal youth, and,
- Increase the employment rate by 20%.

The third goal is to enhance employment of Aboriginal people and encourage economic development. A key objective is to increase the proportion of Métis and off-reserve First Nations people in the labour market to a representative level in 20 years. This means the proportion of Aboriginal people who are of working age. In 2001, the representative level is 13.6%. This figure adjusts as new population information becomes known, and the target changes correspondingly.

Some of the performance measures include:

- Increase the proportion of employment income
- Increase Aboriginal labour force participation
- Increase business involvement

Goal Four encompasses a wide array of areas to improve well-being including: culturally-sensitive social services; sport, culture and recreation; health; restorative justice services; and housing. The timelines for the supporting objectives are 20 years. A key objective of which is to better meet the health needs of Métis and off-reserve First Nations people such that their health status approximates that of the non-Aboriginal population in 20 years. Measures include diabetes prevalence rates and disability-free life expectancy among Métis and off-reserve First Nations people.

Another important objective is to increase the proportion of Métis and off-reserve First Nations people living in adequate, affordable housing to the provincial average in 20 years. Some of the performance measures:

- Reduce the proportion of households with multiple problems (affordability, suitability, adequacy)
- Reduce the proportion spending more than 30% of income on housing
- Increase home ownership
- Reduce the proportion of households that rent

Conclusion

It will take a generation to fulfill the vision of the Strategy given the complexities and magnitude of the issues and challenges faced by Aboriginal people. However, there are indications that the Strategy is on the right track. Progress has been reported in reducing the reliance on social services among Métis families due to government's focus on increasing opportunities for Aboriginal people. Feedback from Aboriginal political and community leaders indicate the chances for at-risk children to finish high school are improved through initiatives such as increased support to community schools.

One of the best indicators of an early shift in circumstances is the increased participation of Aboriginal people in post-secondary education. Aboriginal enrolment in post-secondary institutions overall is estimated to be nearly representative of the number of Aboriginal people in the population (13.5%). Aboriginal enrolment at our two universities is also on the rise. This is a significant achievement in support of our objectives. Retention continues to be a challenge, but 80% of graduates from technical institutions are finding jobs.

The labour force participation rate is the percentage of working age people in the population who have paid work. For Aboriginal people, labour force participation still lags well behind non-Aboriginal people, however it is beginning to rise. The participation rate for Métis people is almost the same as non-Aboriginal people.

The MOR strategy represents an unprecedented approach in Saskatchewan and is unique in the country. Most importantly, MOR is a blueprint that will produce solid results in improving the quality of life of Aboriginal people, and indeed, the social and economic fabric of Saskatchewan. The Government is committed to this work and, most importantly, Aboriginal people have the tools to be authors of their own success. In Saskatchewan, our very future depends on our ability to ensure the participation of Aboriginal people in the economic and social life of the Province.

5. LANDS AND RESOURCES

Introduction

The Royal Commission on Aboriginal Peoples made numerous recommendations respecting lands and resources. The recommendations are directed primarily to Canada which is appropriate in view of the special relationship between the Government of Canada and Aboriginal people. However, recommendation 2.4.26 does state that provincial governments should establish policies parallel to the processes and reforms proposed in the recommendations directed to the Government of Canada.

While it is difficult for a provincial government to 'establish policies parallel to processes' that have not in fact been undertaken by Canada, Saskatchewan has been very active in dealing with issues that do arise and involve Aboriginal people and lands and resources. Also, because of the unique relationship between the Crown and First Nations in Saskatchewan flowing from the Treaties, a number of the recommendations have less relevance here than they would in a province such as British Columbia where Aboriginal title has not been dealt with fully. What follows is a summary of some of the key areas where the province is actively involved in lands and resources issues with the Aboriginal people of this province.

Treaty Land Entitlement

Under the *Natural Resources Transfer Agreement* Saskatchewan is obligated to provide provincial Crown land to Canada for the purpose of enabling Canada to satisfy its Treaty obligations. The Treaties promise 128 acres per person but in many cases the full allotment was not received by a First Nation because of an inaccurate determination of the population of that First Nation. Satisfying these claims with vacant Crown land proved difficult because of the extensive settlement that has taken place in southern Saskatchewan since the time of the Treaties. There simply was not enough Crown land in the right locations to adequately resolve the issue.

Through a unique 'made in Saskatchewan' approach, Saskatchewan, Canada and Treaty Land Entitlement First Nations were able to come up with a solution that enables

Saskatchewan to meet it constitutional obligations to Canada, Canada to fulfill the terms of the Treaties and First Nations to obtain land that satisfies their needs. The approach has resulted in the payment of money to First Nations, cost shared by Saskatchewan and Canada, so that the First Nation may purchase private land or provincial or federal Crown land.

These Treaty Land Entitlement Agreements deal with many of the issues raised by the RCAP recommendations dealing with lands and resources. These issues include third parties, water, minerals, roads, urban reserves, tax loss compensation and land quantum. By agreement, all land purchased pursuant to these agreements is done on a willing seller/willing buyer basis. Notwithstanding the challenges that arise from time to time, the agreements have been very successful. They foster self-reliance and economic development. When a First Nation has achieved its minimum acreage required under the agreements, it is able to use its funds for band projects of its choosing or it may continue to purchase more land. An important feature of the Agreements is that when the surface of the land obtains reserve status, any undisposed minerals under the land are transferred by Saskatchewan to Canada for the benefit of the First Nation at no cost to the First Nation.

Since the agreements were first entered into in 1992, almost 600,000 additional acres have attained reserve status in Saskatchewan. The majority of the land that has attained reserve status was purchased from private individuals. Of the 26 First Nations that signed Agreements in 1992, 20 have achieved the minimum number of reserve acres they are required to obtain. A number of selections in urban municipalities have also attained reserve status. This enables First Nations to actively participate in the provincial economy in urban centres. Saskatchewan will continue to devote adequate resources to the fulfillment of these agreements and will co-operate with First Nations and Canada on new Treaty Land Entitlement claims that arise in the future.

Specific Claims

The majority of specific claims result from a First Nation's grievance with the Government of Canada not fulfilling its lawful obligations pursuant to the Treaties or other formal agreements, or breaching its statutory responsibilities such as obtaining the surrender of reserve lands without the proper consent of a First Nation. Saskatchewan is not a party to the agreements that address these wrongs as they are the complete responsibility of Canada. Nevertheless, the province does co-operate with both Canada and Specific Claims First Nations to enable those First Nations to purchase land and have that land attain reserve status.

Land Exchanges

From time to time a First Nation may determine that it does not have adequate land at an existing reserve to provide adequate housing for its citizens or to provide proper facilities for matters such as education. Often the province will be approached to see if it is prepared to trade Crown land that may be located next to the reserve for other reserve land that may be located away from where the First Nation wishes to expand. In these instances the province co-operates fully with the First Nation to assist it in obtaining land in the appropriate location that suits its needs.

Other Land-related Matters

The Province is involved in numerous other land or resource related matters with the Aboriginal people of Saskatchewan. These include assisting First Nations in negotiating with federal agencies on road related matters, discussing issues where boundaries may be in dispute, assisting First Nations in understanding how water resources are managed, and ensuring the right of access to land for hunting and fishing for food for all Aboriginal Peoples who may possess those rights.

6. EXAMPLES OTHER INIATIAVES

The following are examples of other initiatives where the Province is involved in support of Aboriginal people. This is not an exhaustive listing of examples. Nor is it an exhaustive listing of provincial initiatives within a given example.

(a) Employment and Training

In 1992, the Province established the Aboriginal Employment Development Program to increase Aboriginal employment in the province with a goal of building a representative workforce in Saskatchewan. This led to the development of the Aboriginal Representative Workforce Strategy in 1995 with the objective of building partnerships that enable parties to work together to identify employment needs and opportunities, and communicating this information to the Aboriginal community. With this information, Aboriginal people can focus their training and compete for jobs on an even basis. Employers prepare their workplaces for Aboriginal employees by breaking down barriers and providing cultural awareness education to their staff (the cultural awareness education deals with the misconceptions about the Aboriginal community). As of February 2004, fifty partnerships have been signed with large public and private sector employers, organized labour, government departments, Aboriginal organizations, post-secondary institutions and community based organizations.

The Province has also redesigned its employment and income assistance programs and services to help individuals and families address problems that affect their ability to participate fully in the economic and social life of the province by creating financial, employment and family supports. Program planning, development, training and community awareness is done through mechanisms such as local labour market planning networks that encompass relevant stakeholders, including Aboriginal people. The Jobs First Program assist individuals who are at risk of becoming reliant on social assistance help to secure employment.

The Centennial Student Employment Program is an employment subsidy with the objective of placing university and high school students into term employment that allows them to learn about career opportunities and evolve employable skills. Aboriginal youth are able to take advantage of this program to make the transition from traditional to urban worlds.

(b) Education

The Province actively promotes and engages in partnerships with First Nations and Métis peoples at all levels of the education system. It is working closely with First Nations to implement a student tracking system that will not only track student movement within and between education systems but also provide information to support decision-making and future planning.

School^{PLUS} is a new and innovative approach to the education system in Saskatchewan. It ensures schools provide learning excellence for all students and provides supports to learning and well-being through effective partnerships with families, communities, business and human service agencies. This new role of the schools complements provincial education initiatives in support of Aboriginal people. In this regard, the Province has made a concerted effort to address issues of Aboriginal student success and retention in provincial schools. This includes Community Education Programs such as the Community Schools Program, Pre-kindergarten Program, the Indian and Métis Education Development (IMED) Program, the Elders/Outreach Program and Integrated School-Linked Services.

A number of partnerships are in place at the school division/ Tribal Council/ First Nations level, including the one among File Hills Qu'Appelle, a Métis Nation Regina local, and the Regina Public School Board to establish an Urban First Nations /Métis Education Model in the City of Regina. The Saskatoon Public School Division and the Saskatoon Tribal Council signed a Memorandum of Understanding in 2003 to create an equitable governance council that oversees the design of sustainable education supports, programs and services for Aboriginal education from Kindergarten to Grade 12.

The Province has entered into co-management arrangements with the Meadow Lake Tribal Council to ensure shared decision-making and involvement with respect to operation of the public school in Meadow Lake, where many First Nations students attend. This is one of the first such arrangements in Saskatchewan. Other opportunities for co-management of provincial schools are also under discussion.

The Province works with the Office of the Treaty Commissioner to teach Treaties in the classrooms across Saskatchewan. The Province also established CommunityNet, a high speed internet connectivity and a wide-area network for online learning opportunities in all Saskatchewan communities. First Nations Schools are part of CommunityNet giving the teachers and students equal access to online, interactive, distance education.

Partnership agreements such as the Northern Health Science Access Program and the Northern Education Program of Saskatchewan, both which started in fall 2002, enable students to achieve their education and career aspirations with the following special features: The Northern Teacher Education Program (NORTEP) was designed to increase the number of Aboriginal teachers in northern Saskatchewan. The Saskatchewan Urban Native Teacher Education Program (SUNTEP) provides teacher training for Aboriginal residents in three locations: Regina, Saskatoon and Prince Albert.

(c) Health

Saskatchewan Health affirms that health is essential to the life, welfare, identity and culture of all peoples. The health care services provided by Saskatchewan's Regional Health Authorities (RHA) are available to all Aboriginal people in Saskatchewan, including those residing on-reserve, on an equitable basis. Saskatchewan Health also has focused on ways to better meet the health needs of Métis and off-reserve First Nations people such that their health status will approximate that of the non-Aboriginal population in 20 years. The strategy includes initiatives in the area of diabetes, health education, representative workforce, access to primary health care services, Fetal Alcohol Spectrum Disorder prevention and treatment, HIV/AIDS prevention services, Alcohol and Drug services, and a Successful Mothers Support Program.

Responsibility for the planning of delivery of health services on a regional basis resides with the Regional Health Authorities in Saskatchewan. The RHAs work with Tribal Council and other regional Aboriginal groups to ensure that processes are in place to ensure equitable access to appropriate services for all residents of the province, including Aboriginal residents. Examples of RHA-sponsored Aboriginal-specific projects include the White Buffalo Youth Lodge in Saskatoon, and the Four Directions Community Health Centre in north central Regina.

The Northern Health Strategy, currently being developed by leaders from the three northern Regional Health Authorities and the Northern Inter-Tribal Health Authority, is built on principles developed by and for northern residents. The basis for a Northern Health Strategy identifies health promotion and illness prevention as cornerstones of the Aboriginal health, and considers the North's unique languages, and the cultural and socio-economic situation.

The Athabasca Health Centre, on the Chicken Indian reserve near the Town of Stony Rapids, was officially opened in July 2003. The Athabasca Health Centre is a joint federal/provincial/local community project. As well, construction of a new Fort Qu'Appelle Indian Hospital, a joint project of Saskatchewan Health, Indian and Northern Affairs Canada, and Treaty Four First Nations, is underway. For the first time ever, a health center and a school will be integrated into one facility in the northern community of Ile a la Crosse.

(d) Economic Development

The Province has participated in a number of initiatives to encourage increased Aboriginal participation in the economy. The Province and Canada renewed the Western Economic Partnership Agreement (WEPA), which will continue to fund projects that emphasize Aboriginal development that are also consistent with the Province's priority economic sectors. As well, the Canada/Saskatchewan Business Service Centre's Aboriginal Network is a venue where Aboriginal entrepreneurs can access information about business start-up or expansion.

Significant gaming revenues flow to First Nations communities from the First Nations Fund for economic development and other initiatives at the community level. Similarly, gaming revenue flows through the Clarence Campeau Development Fund (CCDF) to provide access to equity for Métis economic development initiatives.

In 1999, the Saskatchewan government introduced its major forestry sector expansion strategy. A key objective is to directly vest term supply licenses (and eventually long-term forest management agreements) with northern Saskatchewan First Nations and Métis communities. This includes the negotiation of suitable business partnerships to ensure Saskatchewan Aboriginal peoples have an equity position in the long-term development of the sector. It also provides First Nations and Métis further capacity building opportunities through investment and development in the resource management and related services sector.

In October 2002, Saskatchewan signed the Canada-Saskatchewan Northern Development Agreement (NDA) and Northern Development Accord with the federal government and Northern Development Board Corporation (NDBC). The Accord is a Memorandum of Understanding between the federal and provincial governments to increase cooperation and coordination of activities, as well as to develop a long-tern strategic plan for Northern Saskatchewan (over 80% of northern residents are Aboriginal).

(e) Resource Management and Opportunities

In Saskatchewan, co-management (co-operative resource management) is a tool to achieve sustainable, integrated resource management. It is a process that involves all resource users, interests and Aboriginal representatives who have stake in how the environment and renewable resources are managed on provincial Crown lands. Co-management provides these people with the opportunity to have meaningful input into decisions that affect them, to undertake joint projects and programs and to generate resource-based benefits. One of the key principles of co-management is that it respects Aboriginal and Treaty rights.

Saskatchewan has approximately 20 multi-stakeholder co-management boards, all of which include Métis and First Nations representatives. Traditional/local knowledge is used in decision-making, along with scientific knowledge. A good example of a successful co-management partnership is the one between the Province and Montreal

Lake Cree Nation that has worked successfully on elk management off of reserve, fisheries management on reserve and joint capacity building to train First Nation resource officers.

The Province is currently moving toward a Forest Management Agreement with Peter Ballantyne Cree Nation (PBCN) over an area that includes their traditional lands in northeast Saskatchewan. NorSask Forest Products, owned by the Meadow Lake First Nations, holds the forest management licence for the central-north-west side of the province. The Province also signed an agreement with seven First Nations to pursue forest development in the island forests, which are blocks of forest that lay south of northern provincial forest.

The Province has entered into Services Agreements with the Federation of Saskatchewan Indian Nations (FSIN) and the Métis Nation–Saskatchewan (MNS), the purposes of which are three-fold: to assist in building capacity of the organization to provide sound environment and resource management assistance to their communities; to include First Nation and Métis knowledge in Saskatchewan Environment's policies and plans; and to build a productive and lasting relationship in order to co-operatively achieve mutual goals.

(f) Hunting, Fishing, and Trapping

The Province affirms and respects the Treaty/Aboriginal right to hunt, fish and trap for food on Crown lands as set out in the *Natural Resources Transfer Agreement (NRTA)* and reflected in provincial polices and practices through co-operative means. First Nations and Métis are given priority in allocation of fish and game for food, over commercial, recreational and other users.

The *NRTA* provides Treaty Indians with access to hunting on unoccupied Crown and other lands to which they have a right of access. Most of the land in the northern half of the province is not restricted. Occupied Crown lands, such as provincial parks, are also open to First Nation hunting for subsistence year round if hunting seasons are established for licensed hunting. The Province also respects Métis Aboriginal rights as set out in the Supreme Court of Canada decision in *R. V. Powley*, 2003, and working with affected government Departments and the Métis Nation – Saskatchewan (MNS) on how the decision will be recognized in Saskatchewan.

With respect to commercial fishing, most of it occurs in the north where most fishers are Aboriginal and they have 90 per cent of the commercial allocation. When a license or a lake becomes available for use, it is provincial policy to offer it first within the local northern communities, which are comprised primarily of Aboriginal people. Commercial fishing is not a Treaty or Aboriginal right in Saskatchewan.

With respect to trapping, most of it occurs in the north. Trapline management in northern Saskatchewan has been undertaken in Saskatchewan by Fur Conservation Area Councils since 1946. Councils are made up of local trappers who advise Saskatchewan

Environment on all aspects of fur and trap line management, including quotas and new members for vacant trap lines. Most trappers are Aboriginal people.

With respect to gathering, subsistence gathering of medicinal or ceremonial plants without a license is enabled through *The Forest Management Resources Act.*

(g) Heritage

Provincial legislation and policies provide for heritage resource impact assessment, impact mitigation, and other regulatory and conservation measures where proposed land developments may adversely affect Aboriginal heritage sites. Outright protection is afforded to heritage "sites of a special nature" including burial places, spiritual sites, and other locations of traditional and cultural importance. Funding to conduct heritage site inventories or other research in partnership with Aboriginal governments is available through the Saskatchewan Heritage Foundation. Land developers are routinely required to carry out mitigation measures at sites threatened by development and to consult with local First Nations wherever "sites of a special nature" are involved. Aboriginal people are involved in all aspects of heritage projects that involve or may adversely affect "sacred sites" or other sites of a special nature.

(h) First Nations Children and Families

There are currently seventeen operational First Nations Child and Family Services (FNCFS) Agencies in Saskatchewan and all have signed agreements with the Province to provide mandated services under authority of the provincial *Child and Family Services Act.* Authority is delegated under Section 61 of the Act. The Province provides a comprehensive child welfare training curriculum to First Nations Child and Family Services (FNCFS) Agency staff who provide services on reserve as well as department staff.

(i) Aboriginal Youth and Recreation

The Provincial Aboriginal Participation Initiative is in place to improve Aboriginal access to sport, culture and recreation opportunities in urban and northern communities. The Province is also working with major sport, culture and recreation organizations in Saskatchewan to improve Aboriginal access to sport and recreation activities in urban centres and the North through the provincial Lotteries program. Opportunities for youth to be involved in the design, development and delivery of youth services come in the form of feedback through the Saskyouth.net web site, attendance on department committees, hiring practices that place Aboriginal youth program creation and management roles and requesting the guidance of the Provincial Youth Advisory Council. The adequate representation of Aboriginal youth in all these involvement opportunities is pursued.

(j) Aboriginal Women

The Province currently works with Métis women through the Métis Nation – Saskatchewan (MNS) Tripartite Process, and First Nations women through the Saskatchewan First Nations Women's Council (SFNWC), an arm of the Federation of Saskatchewan Indian Nations (FSIN), to address priority issues. These issues are also priorities to be addressed through the *Action Plan for Saskatchewan Women*. It has four goal areas that address economic equality and security, safety, health and well-being and equitable participation of women in leadership and decision-making.

Indian Governments of Saskatchewan

Federation of Saskatchewan Indian Nations

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rotecting and
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Saskatchewan

December 15, 2003

Mr. Wilton Littlechild
Chairperson, Commission on First Nations and Métis Peoples and Justice Reform
802, 119 - 4th Avenue South
Saskatoon, Sk.
S7K 5X2

Dear Mr. Littlechild:

This is in response to recommendation 3.1 of the third interim report *Working Together* released by the Commission on November 20, 2003. Recommendation 3.1 relates to the actions taken in response to the recommendations of the Royal Commission on Aboriginal Peoples. The FSIN Indian Justice Commission met today and briefly discussed the RCAP report and some of its recommendations. Commission members expressed the following:

1. It is fair to say that FSIN has not fully explored the overall potential impact of implementing the RCAP recommendations. This type of exercise requires a coordinated approach; this becomes a challenge when First Nations' time and energy is expended on developing proposals and responding to the different reporting requirements of government funding bodies.

2. The RCAP report is a complex document that requires a coordinated planned approach to effectively implement its recommendations; this has not occurred. Individual First Nations have been proactive in designing and implementing specific justice initiatives to address issues of addictions, violent behaviors and inter-generational effects from residential schools. Some of these initiatives have been funded through the *Aboriginal Healing Foundation* in the short term with no identified resources for continued funding. The Federal Government's response to RCAP through *Gathering Strength* has assisted in funding some First Nations governance initiatives. Overall though, the effort has been fragmented.

3. The Chiefs of Saskatchewan mandated the FSIN in 1996 to initiate discussions with the Government of Canada about Treaty rights, Treaty implementation and the recognition of First Nation jurisdiction. In July of 2003, the FSIN and Canada negotiated an Agreement-in-Principle, together with a Tripartite Agreement-in-Principle that included FSIN, Canada and Saskatchewan. The FSIN and Canada have come to the Table to discuss the Treaty issues of

education, child welfare, health, shelter, hunting/fishing/trapping/gathering, annuities, justice, and lands and resources. FSIN, Canada and Saskatchewan are negotiating new governance and fiscal arrangements based on a government-to-government relationship.

These comments reflect in part the experiences of First Nations history and the Federal Government's effort to assist First Nations in addressing the intergenerational effects of colonialism.

Sincerely,

Second Vice Chief Guy Lonechild
THE FEDERATION OF SASKATCHEWAN INDIAN NATIONS
Indian Governments of Saskatchewan

Cc: Doris Greyeyes, FSIN Justice

Métis Family &
Community
Justice Services,

Suite 317 – 165 3rd Ave South
Saskatoon, Sask. S7K 1L8

Phone : (306)242-6886
Fax : (306)242-1662

ebruary 20, 2004

s Sherrie Bodnarchuk
02 - 119 Fourth Avenue South
askatoon, Saskatchewan
K 5X2

ear Ms. Bodnarchuk:

This letter is in response to your letter to Clem Chartier dated February 9, 2004. Métis Family & mmunity Justice Services, has attempted to develop a response on recommendation 3.1. In terms of plementing recommendations from the Royal Commission on Aboriginal People, we cannot comment, as we re not involved with any form of implementation of these recommendations.

this time, it is my understanding that there was very little, if any resources afforded to the Métis Nation – skatchewan, to develop any formal response or implementation strategy in response to the RCAP reports. wever; it is also my understanding that the Office of the Registrar is an initiative that came out of the RCAP port and the Gathering Strength Initiative. The federal and provincial government cost-shared this initiative d participated in the development of an enumeration proposal with the MN –S. The Office of the Registrar is ery important initiative which has strengthened our governance structure through the development of a izenship Act for our Nation. As well, many of the initiatives we currently participate in are a result of the AP Report such as the Justice Development Initiative for example.

el that it is time to focus on the future and the task at hand by ensuring that the Commission on First tions and Meets Peoples and Justice Reform's recommendations are implemented through the creation of Aboriginal Justice Commission.

ank you for your attention in this matter.

cerely,

x Maurice
nister of MFCJS

"Communities working together for our children"

THE PROCESS

14

THE PROCESS

INTRODUCTION

The Commission on First Nations and Metis Peoples and Justice Reform began its work with a commitment to be as accessible and approachable as possible. Reaching out to the numerous and varied communities of Saskatchewan was vital to the success of this Commission. It has been the Commission's mission to create change and make a difference by:

- Listening to people;
- Building relationships;
- Promoting respect and change;
- Recognizing successes; and
- Making recommendations for future justice reform.

Enabling people from all geographic areas, walks of life and ethnic communities to deliver their message to the Commission was important. To this end, the Commission devised several strategies that resulted in dozens of organizations and thousands of individuals dialoguing with the Commissioners over a two-year period. Community dialogues were the most visible and effective means of facilitating a discussion of the issues. Other strategies included: roundtables, presentations, site visits, town hall meetings, in-camera meetings, papers and other written submissions, meetings with stakeholders and personal discussions/interviews conducted by Commissioners and staff. (Please refer to Appendix for a complete list of communities visited, presentations received and other information regarding the process.)

COMMUNITY DIALOGUES

The Commission put a great deal of emphasis on Community Dialogues. This part of the process was considered the best means of gaining the perspective and wisdom of the people of Saskatchewan – the people who are directly affected by the justice system. Three basic but essential questions were posed at every dialogue:

1. What concerns do you have with the justice system?
2. What examples of successes or positive programs have you seen?
3. How do you think the justice system can be improved?

The purpose of the community dialogues – as was the overall strategy – was to generate information and solutions for change that will improve the relationship between First Nations, Metis and non-Aboriginal people and the justice system. Specifically, the Commission sought solutions that will:

- Reduce levels of offending;
- Reduce levels of victimization;
- Reduce levels of recidivism;
- Improve the safety of First Nations, Metis and non-Aboriginal communities in Saskatchewan;
- Identify short and long-term implementation strategies to achieve the above; and
- Identify the vehicle to oversee the implementation of the Commission's solutions.

The Commission held community dialogues in approximately twenty communities. These included the large urban centres, as well as remote northern communities such as Black Lake, First Nations communities in all corners of the province and communities in which the Metis perspective could be presented. Often, people spoke in their language, whether it was Cree, Dene or Saulteaux, with translators assisting the Commissioners and others in the room to understand what was being said. The dialogues were recorded and transcripts were printed. In some cases, video records of the dialogues were produced. In La Ronge, Missinipi Broadcasting carried a live broadcast of the community dialogue to its large radio audience in the North.

The Commission was invited to the various communities and local people organized the event, finding a suitable venue, providing meals and generating interest within the community. The Commission assisted with print and electronic advertising and contacting media outlets in the area and throughout the province. In all cases, Elders played an important role and First Nations and Metis culture was respected and embraced. All dialogues were conducted in a circle format with a Commission staff member acting as moderator.

During these community dialogues, many individuals spoke frankly about their personal, often painful experiences with a justice system, which in their experience has failed them. The Commissioners heard their words and acknowledge how difficult it must have been for them to tell their stories in a public format. Many spoke of the importance of having been listened to.

STAKEHOLDERS

Very early in its work the Commission on First Nations and Metis Peoples and Justice Reform determined that it would be important to seek guidance from a cross-section of the Saskatchewan community. For this reason a panel of individuals who would become 'stakeholders' in this process was created. The stakeholders included First Nations and Metis people, non-Aboriginals, justice professionals, community leaders and others with an interest in seeing reforms to the justice system.

The Stakeholders met with the Commissioners on several occasions and were particularly active when the Commission held dialogues or other events in their local communities. Stakeholders included people from the North, urban centres and communities in the southern part of the province.

The Commissioners regard the input of the stakeholders as valuable in providing a strategy for designing an effective process to dialogue with the people of Saskatchewan. Their commitment to the Commission was evident in the meetings as they spoke passionately about issues that affect their communities, their families and themselves. (A list of stakeholders can be found in the Acknowledgements later in this report.)

The Commissioners would like to thank everyone who participated in the community dialogues and the roundtables and made presentations to the Commission. We appreciate the time and effort many people put into organizing site visits and providing the Commission with information and invaluable perspectives of the justice system as it functions on a daily basis. This Commission has succeeded thanks to the co-operation of many people throughout Saskatchewan.

PRESENTATIONS

The Commission received more than 40 presentations from organizations ranging from First Nations and Metis organizations to government departments to police services. The voices of youth, women and special interest groups were heard through these presentations. Generally, these presentations were made in a public forum with members of the community and media in attendance. Many of these presentations were received at public events held at such venues as Sask. Native Theatre Co., the Indian and Metis Friendship Centre in Saskatoon, and the White Buffalo Youth Lodge in Saskatoon. Presenters usually left the Commissioners with a formal written presentation that accompanied an oral presentation followed by a question and answer session that enabled a dialogue with Commissioners and members of the audience and media.

ROUNDTABLES

Twelve roundtables were held with six designed to deal specifically with the critical areas identified by the Commission. These six roundtables included Racism, Victims and Violence, Policing, Restorative Justice, Crime Prevention and Governance and Community Development. Roundtables were not held for the other two critical areas, Justice Institutions and Youth. However, a roundtable that focussed on the *Youth Criminal Justice Act* (YCJA) was held in August 2002, eight months prior to the implementation of the new Act on April 1, 2003.

Three roundtables involving the Commission's stakeholders were held, with one dealing specifically with the issue of implementation of this Commission's recommendations. Roundtables dealing with research and the importance of private industry and economic development were also held.

Participants in these roundtables brought expertise and passion for the specific issue to be discussed during the daylong event. With a Commission staff member acting as facilitator, the room was usually divided into three or four tables in order to better facilitate discussion. Each table would report to the entire group. The roundtables were recorded and transcripts generated. Summaries of these roundtables are contained in the Appendix of this report and also appear on the Commission website: www.justicereformcomm.sk.ca

The roundtables were held in Regina and Saskatoon with Wanuskewin Heritage Park near Saskatoon a favourite venue.

SITE VISITS

Visits to youth centres, correctional centres, prison institutions, courts and other facilities provided the Commissioners with graphic evidence that all is not well in a system that incarcerates too many First Nations and Metis people, particularly youth. In some instances – notably certain areas of the Regina Correctional Centre – the conditions in which some of these people are being held are unacceptable. Holding men in the segregation unit of the Regina Correctional Centre was deemed to be inhumane, prompting the Commisison to recommend immediate closure of this unit.

The site visits put a human face on the injustice that is being suffered by too many members of the First Nations and Metis community. Sixteen site visits were conducted and the Commissioners had the opportunity to hear from inmates, patients and clients of these facilities as well as staff. Often, staff excused themselves from the meetings, allowing inmates to speak candidly to the Commissioners. In many cases, Commissioners were able to have one-on-one conversations with individuals in these facilities.

As well as correctional centres, the Commissioners visited centres such as Rainbow Youth Centre in Regina, Youth Outreach in Prince Albert and EGADZ Youth Centre in Saskatoon and learned about the various programs and initiatives that have been designed to provide young people with a safe environment, counseling, employment and, most important, hope for their future. The Commissioners were impressed by the commitment of staff and youth in these and other youth centres and pleased to see the successes that are being achieved.

Town Hall Meetings

Three town hall meetings were held early in 2003. The purpose of these events was to allow people in the urban centres of Prince Albert, Saskatoon and Regina to express their opinions on justice issues to the Commission and, through the media, to a wider audience. The town hall meetings attracted large numbers of people from the community at large and were well covered by the Saskatchewan media. Moderated by broadcast journalist David Kirton in Prince Albert and Saskatoon, and by Regina Friendship Centre director Ernest Lavalley in Regina, the format allowed audience members to express opinions and ask questions of the Commissioners. Local cable companies assisted by taping the town hall meetings and broadcasting the proceedings at a later date. As usual, these events were recorded and transcripts produced.

In-Camera Meetings

When requested, in-camera meetings were arranged with the participants encouraged to present their perspectives and opinions in a safe environment. These sessions were held with only Commissioners in attendance with staff present only when invited to do so.

Papers and Reports

A number of papers and reports from organizations and individuals with expertise in various areas were commissioned. This included papers that offered guidance in the planning stage and provided background information regarding previous commissions and inquiries. Later, papers that would enhance the in-house research were commissioned. Volume II of this Final Report contains some of the papers that have been presented to the Commission.

CONCLUSION

The Commission on First Nations and Métis Peoples and Justice Reform has now concluded its work, leaving the people of Saskatchewan to achieve the necessary changes we have outlined in our report, Legacy of Hope.

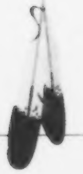
It is the wish of this Commission that Champions for Change will continue to work towards the reform of justice in Saskatchewan, to improve the conditions in the lives of our children, grandchildren and great-grandchildren.

The goal of this Commission was to identify efficient, effective and financially responsible reforms to the justice system. The reforms we recommended will improve the justice system so it reflects the strengths and values of First Nations and Metis people, and will ultimately lead to safer communities in Saskatchewan.

The time for change is now, justice must be returned to the communities. Partnerships must be formed with the common outcome being to have a just and prosperous future in this province, to move forward in peace, harmony and respect for each other.

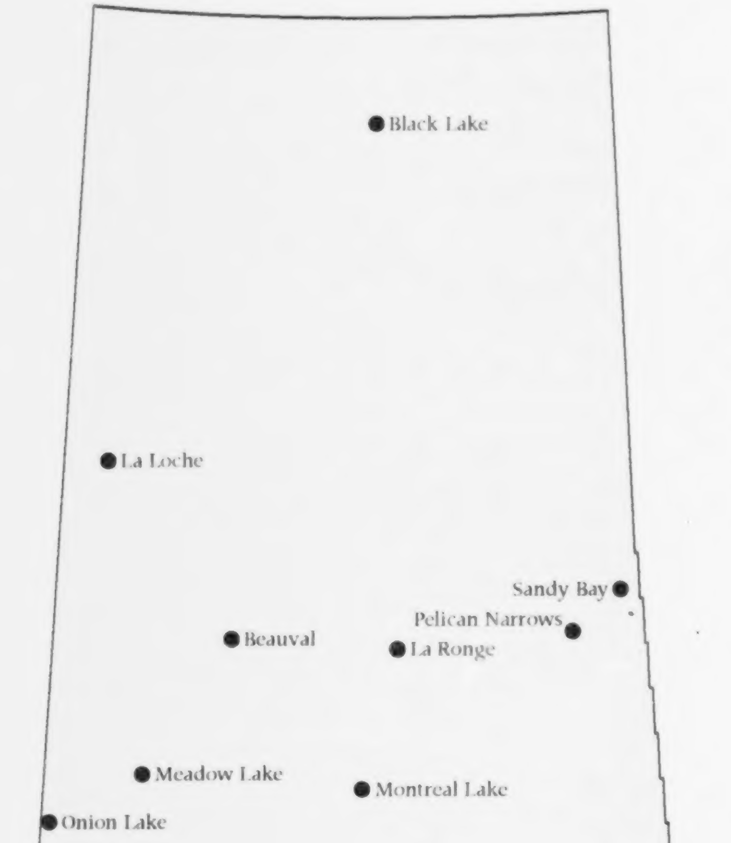
Let us not look back in another 150 years and see no change.

> **The more intelligent and educated Indians, of which there are great number, are extremely anxious that the experiment should now be tried of allowing them the control of their own private funds, and express themselves ready and willing to assume the consequent liabilities. This desire seems most natural, and I trust that if it be complied within the manner proposed, individual enterprise and industry will be developed to an extent which will justify so important an alteration in the administration of Indian Affairs.** (The Earl of Elgin, Governor-General of Upper Canada, 1854)



APPENDIX 1

COMMUNITY DIALOGUE LOCATIONS



LIST OF COMMUNITY DIALOGUE DATES AND LOCATIONS

April 15, 2002
Regina

April 15, 2002
Regina

April 18, 2002
Saskatoon

June 5, 2002
Meadow Lake

June 6, 2002
Beauval

June 7, 2002
La Loche

June 8, 2002
Saskatoon

June 11, 2002
Sandy Bay

June 12, 2002
Pelican Narrows

June 13, 2002
Black Lake

September 11, 2002
Fort Qu'Appelle

September 16, 2002
North Battleford

September 17, 2002
Onion Lake

February 10, 2003
Saskatoon

March 11, 2003
Montreal Lake

April 24, 2003
Cote First Nation

May 28, 2003
Fort Qu'Appelle

May 29, 2003
Cowessess First Nation

June 5, 2003
La Ronge

June 6, 2003
MN-S Eastern Region, Melfort

June 26, 2003
Beardy's and Okemasis First Nation

November 18, 2003
White Bear First Nation

APPENDIX 2

LIST OF ROUNDTABLES HOSTED BY THE COMMISSION

March 12 & 13, 2002
Stakeholders

August 23, 2002
Youth Criminal Justice Act (YCJA)

September 13, 2002
Research

November 25 & 26, 2002
Stakeholders

January 16, 2003
Racism

February 11, 2003
Victims and Violence

March 12, 2003
Police Issues

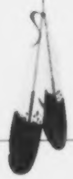
March 18, 2003
Restorative Justice

April 15, 2003
Crime Prevention

May 27, 2003
Governance & Community Development

June 2 – 3, 2003
Stakeholders and Implementation

September 9, 2003
Business/Economic



LIST OF ON-SITE TOURS TAKEN BY COMMISSIONERS

September 10, 2002
Paul Dojack Youth Centre
Regina Correctional Centre

September 18, 2002
North Battleford Youth Centre
Drumming Hill Youth Centre
North Battleford Adult Corrections
North Battleford Forensic Unit

October 21, 2002
Kilburn Hall Youth Centre
Yarrow Youth Farm
Saskatoon

October 25, 2002
Prince Albert Youth Outreach

January 14, 2003
EGADZ
Saskatoon

February 12, 2003
Rainbow Youth Centre
Regina

April 23, 2003
Saskatoon Correctional Centre

April 29, 2003
Piwapan Women's Centre

June 24, 2003
Pine Grove Correctional Centre
Prince Albert

October 21, 2003
Saskatchewan Penitentiary
Prince Albert

December 4, 2003
Regional Psychiatric Centre
Saskatoon

LIST OF PRESENTATIONS MADE TO THE COMMISSION

September 12, 2002
Aboriginal Court Worker Program

October 22, 2002
Elizabeth Fry Society of Saskatchewan

October 24, 2002
FSIN Health & Social Development
Indian Child & Family Services
Saskatchewan Police Commission

October 25, 2002
Prince Albert Police Service
Operation Target
Prince Albert Youth Council

October 29, 2002
White Buffalo Elders
Prison Families – Waiting at the gate
FSIN Special Investigations Unit
Children's Advocate Office

November 27, 2002
Saskatchewan Legal Aid Commission
Human Services Integration Forum

January 14, 2003
Saskatchewan Coalition Against Racism

January 15, 2003
Saskatchewan Justice &
Corrections and Public Safety

January 17, 2003
Canadian Race Relations Foundation

February 12, 2003
Women of the Dawn
Saskatchewan First Nations Women's Council
Regina Friendship Centre Healing Program

February 13, 2003
Metis Women's Council
Metis Youth Council
YWCA

February 14, 2003
Government Relations & Aboriginal Affairs
Central Urban Metis Federation Inc.

March 13, 2003
Federation of Saskatchewan Indian Nations
RCMP

March 14, 2003
Regina Police Services
Saskatchewan Association Chiefs of Police

March 17, 2003
Regina Alternative Measures Program

April 14, 2003
Saskatchewan Environment (SERM)
MN-S Denholm Local 98
MN-S Battle River (Western Region A1)

April 22, 2003
Assembly First Nations Christian Ministers

May 26, 2003
Institute for the Advancement of Aboriginal Women
Corrections Service Canada
Southern Plains Metis Development Corp.

May 30, 2003
Saskatchewan Learning
Saskatchewan Health

June 2, 2003
Saskatoon Police Service
Canadian Bar Association

June 25, 2003
PAGC Justice Commission

June 27, 2003
Kids not in School Initiative

APPENDIX 5

SUMMARY OF STAKEHOLDERS' ROUNDTABLE

Commission Process:

On March12 and 13, 2002, the Commission on First Nations and Métis Peoples and Justice Reform hosted its first dialogue with "front-line" justice workers. The Commission had two objectives: first, to secure ideas on where the Commission might focus its work for the next two years and identify what the challenges might be and, second, to establish a network of justice workers who could help facilitate and critique the work of the Commission.

The first gathering was informal. On the evening of March 12, Chair, Willie Littlechild, opened the reception welcoming the stakeholders as trusted friends. After an ice-breaker, stakeholders were asked to describe their expectations for the meeting which was an essential exercise since it set the tone for the next day.

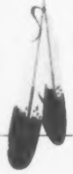
On March 13, facilitators led the stakeholders through three exercises. In the first, stakeholders were asked to identify critical areas for reform of the justice system. In the second, they were asked to identify issues where the Commission would face challenges and opportunities as it fulfilled its mandate. In the final exercise, stakeholders were led through a closing circle where they were asked to speak from the heart on anything they felt was important.

Expectations

The specific question put to the stakeholders was "What would make for a good day tomorrow?"

In general, participants shared a sincere desire to explore and understand other perspectives with respect to justice reform in Saskatchewan. This is significant: although all stakeholders came from organizations and communities with specific needs and objectives, there was a definite interest in understanding the perspectives of other stakeholders. In fact, this interest was often described in terms like "establish a network for future dialogues", "sharing what works and best practices", and "closing the communication gap with respect to the justice system."

Another significant theme that emerged concerned the need to balance what is not working with respect to the justice system with what is working or could be further improved. The Commission was pleasantly surprised to hear stakeholders did not want a witch-hunt. Instead, the hope was that the Commission would work towards building positive relationships between, for instance, law enforcement agencies and the communities they serve. Doing so meant looking at what was working as well as what was not working in the justice system.



Without a doubt there are some things not working with the justice system and making sure the "silent voices" would be heard on this subject was a third theme. The Commission would have to find ways to involve those most affected by the justice system.

Other expectations included defining what justice is, securing input from front-line service delivery people, securing input on the long range planning and implementation phases, and making sure the stakeholders forum stays solution oriented, respectful and open to new ideas and understandings.

Critical Areas for Reform

On the first full-day of the meeting Commissioners asked stakeholders "what are the critical areas for justice reform in Saskatchewan?" For instance, what are the key areas for improvement and what are the areas for greatest hope and opportunity?

In responding to this question stakeholders adhered to their self-imposed commitment to staying constructive. However, there were moments when anger and frustration with the justice system needed to be released. Stakeholders acknowledged this need and when it happened they honored the experience by letting it happen rather than repressing it.

Stakeholders divided into three groups. The following is a summary of the themes that emerged.

The Community Connection

One theme that received a lot of attention was an improved role of the community in addressing justice matters. Safer communities for children, healing for families and community support for those in contact with the justice system were among the themes discussed.

Victims and Violence

Stakeholders were clear that violence should not be accepted in communities. But since society tends to blame the victim, the Commission should be sensitive to the need to validate a person's trauma. Moreover, it should consider methods of empowering women and men to deal more effectively with violence, including improved access to support programs. Even law enforcement officers were acknowledged as needing support in this regard.

Education and Understanding

Improving communications between the justice system and the communities they serve was another recurring theme. Too often victims, offenders, their families and their communities have little understanding of the processes the justice system uses to "administer" its product. As long as there exists a gap in communication and understanding, poor assumptions will be made, opportunities for life-long learning will be lost and relationships will continue to suffer.

Changing the Ethic and Orientation of Organizations

It was suggested the Commission might have to work on changing the culture of the organizations in the justice system. While it was acknowledged there were many good, honest people working within the justice system, that same system tends to undermine constructive, healthy behavior or it precludes innovation and cooperation.

Reforms and the Wider Context

Stakeholders encouraged the Commission to consider the wider social, economic and political context in which its recommendations would be implemented. On a similar note, stakeholders hoped reforms would take an integrated approach, with social issues, community needs and justice system cooperation being the norm.

Youth Issues

Since the system tends to criminalize people who come in contact with it, stakeholders felt it imperative there be some investment in keeping youth out of the system in the first place. This may mean more programs for sports, addressing substance abuse and other issues specific to teenagers.

On Incarceration

Many stakeholders voiced their support for the notion that incarceration should be the last resort, and not the first response of the justice system. Where incarceration is necessary, stakeholders wanted that experience to be truly rehabilitative and productive rather than a convenient warehousing alternative.

The Root Causes of Crime

Underlying every theme or issue discussed was the need to address the root causes of crime, to take a wider view of the problems (as opposed to a sector by sector perspective) and to concentrate on positive and constructive alternatives. It was even suggested the Commission examine the foundations and history of the existing justice system to reveal hidden assumptions about crime, rehabilitation, justice, healing and safe communities.

What's Working and What's Not

The Commission was reminded that there are some things working well with respect to the justice system, that while there is bad there is good. Commissioners were encouraged to identify those practices and programs that seem to be working and find ways to improve on that progress. So in recommending solutions to problems a balance must be found to build on what is working.

Racism In All Its Forms

Despite the forward-looking and constructive approach stakeholders brought to bear on all the issues discussed, no one could deny the significant impact racism has on the justice system's relationship with Aboriginal people. It impacts how calls are handled, how information is processed and prioritized, and how the justice categorizes, analyses and solves problems.

Challenges and Opportunities

In the afternoon of March 13, Stakeholders were asked to identify potential challenges and areas of opportunity the Commission should be aware of as it fulfilled its mandate.

Good Process

Stakeholders made a number of suggestions concerning the processes the Commission should use as it developed its recommendations. Providing a safe, yet open forum for people to talk about their experiences was viewed as essential. Using technology to promote the work of the Commission was seen as important, particularly with respect to the general public who need to be informed about the issues. Interestingly, stakeholders seemed concerned the Commission not become too pre-occupied with formal "consultations" or "hearings", but consider dialogues with communities.

Balance in the Dialogues

The Commission was encouraged to strike an important balancing act with respect to its dialogues. References were made to listening to agents of the justice system, victims, offenders, their families and their communities, those who are marginalized by society, those who run the system, service providers, and Aboriginal and non-Aboriginal communities.

Balancing the Past and Present

While many appreciated the Commission's forward looking focus, stakeholders recommended compassion and patience when past problems would emerge in the Commission's processes. Aboriginal and non-Aboriginal people want change, sooner rather than later, but somehow the past will have to be reckoned with and acknowledged.

Making the Case for Change

The Commission was reminded its recommendations would have to be implemented in what may be a difficult environment. Not only will it be expected to make a strong-case for reform, it will have to maintain programs that are working, change for those that are not, and it must address the need for short term and long-term results.

A Good Communications Strategy

Stakeholders had suggestions for communicating the Commission's purpose and progress, with specific reference to Aboriginal and non-Aboriginal communities. Transparency, openness, patience and accountability were among some of the values the communications strategy should embody.

Capitalize on Community Strengths

Getting people and organizations to share power and responsibility for the results was seen as both a major challenge and opportunity. And while every community and organization was recognized as possessing strengths and weaknesses, the key to positive reform was seen as lying with the communities who have to live with the results.

The Commission as a Bridge

While many viewed the Commission as a catalyst for change, many also saw it as a bridge between First Nation, Metis and non-Aboriginal communities and the justice system. Youth, victims, offenders (both in the past and in those currently within institutions), front-line justice workers in the communities, and government departments and agencies need to hear from one another in order to build a foundation for constructive and lasting change.

Other Barriers

A variety of other possible challenges were mentioned to the Commission. They included overcoming public cynicism, conflict between the Commission's proposed agenda for change and government (federal and/or provincial) priorities, bridging the distances between communities, and making sure the dialogue process was safe, efficient and effective.

The Closing Circle Ceremony

To end the day properly, stakeholders, Commissioners, staff and the facilitators were offered the opportunity to speak freely on whatever issue they felt important. Most gave thanks for what they felt was a powerful and significant gathering of people and ideas. Some used the opportunity to remind the Commission of the significance of the work that lay before them and wished them encouragement. Virtually everyone felt the Commission had embarked on its mission in a positive and constructive manner.

The circle itself proved a powerful means of consolidating the themes, concerns and hopes expressed in the sessions. The gathering closed with a prayer from Elder Maria Campbell.

SUMMARY OF ROUNDTABLE ON YOUTH CRIMINAL JUSTICE ACT: IMPLEMENTATION IN SASKATCHEWAN

Commission Process:

On Friday, August 23, 2002 The Commission on First Nations and Métis Peoples and Justice Reform held a roundtable on the new YCJA Act and the effects it will have in Saskatchewan In attendance at the Wanuskewin Heritage Park gathering were the Commissioners and staff plus invited guests from a wide range of service and government organizations. An open discussion was held throughout the day. This roundtable progressed in a different manner than other roundtables. Due to the specifics of this topic, presentations were made first on the new Act and then how the different organizations were going to implement it. The Commission put forward their preliminary comments in our January 15, 2003 report entitled A Dialogue in Progress: Focus on Youth. You can read more on this on our website at www.justicereformcomm.sk.ca and for more information on the YCJA Act itself you can go to http://canada.justice.gc.ca/en/ps/yj

General Information:

The purpose of the roundtable was to bring together leading authorities on the issue of First Nations and Metis justice to generate and share ideas with the Commissioners. The agenda was structured so that Katherine Latimer, Director-General with the Federal Government could give an overview of the goals and objectives of the new *Youth Criminal Justice Act*. The only guideline in the discussion was that they look to the future and what the opportunities and challenges would be, and that they contribute to creating a healthy, just, prosperous and safe Saskatchewan.

Main Themes:

Federal Background

The background to why new legislation was needed was discussed and the following points were put forward as to why the federal government felt it was necessary to replace the *Young Offenders Act* with the *Youth Criminal Justice Act*. They include:

- Too many young people are charged and often incarcerated with questionable results;
- Procedural protections for young people are not adequate;
- Too many youth end up serving custodial sentences with adults;
- There are disparities and unfairness in youth sentencing;
- Interventions are not appropriately targeted to the seriousness of offences;
- They are not adequately meaningful for individual offenders and victims;
- Does not adequately support rehabilitation and reintegration.

How The YCJA Proposes to Address these Flaws

The YCJA is being implemented in an attempt to correct fundamental weaknesses of the YO Act and will attempt to result in a fairer and more effective youth justice system by:

1. Targeting Responses of the Youth Justice System to the Seriousness of the Offence;
2. Clarifying the Principles of the Youth Justice System;
3. Ensuring Fairness and Proportionality in Sentencing;
4. Respecting and Protecting Rights;
5. Enabling Meaningful Consequences Aimed at Rehabilitation;
6. Supporting Reintegration after Custody;
7. Encouraging an Inclusive Approach to Youth Crime.

Provincial Overview

Following the presentation from the Federal Government on the YCJA Act, the different Provincial representatives picked up the discussion. There were two views discussed:

1. **The Renewal of Youth Justice: Implications for Aboriginal Youth in Conflict with the Law**
   Concern was expressed on the high rate of Aboriginal youth being involved in all stages of the youth justice system. It was again identified that the Speech from the Throne stated a goal of reducing the incarceration rates of Aboriginal, both adult and youth. The presentation described the process of using a multi-disciplinary initiative to enable the prevention, provide meaningful consequences and to assist in rehabilitation and reintegration of our youth.

2. **Dialogue on the YCJA: Saskatchewan Perspective**
   The impact of this new Act will work towards more community front-end measures being implemented instead of the high reliance on custody. The Act presents many opportunities to work with different organizations to reduce the numbers of youth in custody. The area of resources needing to be found and the reallocation of supports in the communities was discussed. The need to build partnerships with an increased involvement of First Nations and Metis people is critical.

Comments from the participants regarding the new Act and the implementation of it included:

- To decrease the numbers of youth incarcerated the new "School^{Plus}" initiative needs to be supported as it is a revolutionary process that could be a key factor in keeping youth in school;
- The needs of youth with FASD are still not being addressed and more resources need to be put into this area. Front end services are critical;
- Remand facilities in the North are inadequate and the services recommended are difficult to obtain.

SUMMARY OF RESEARCH ROUNDTABLE ON REFORMS TO THE JUSTICE SYSTEM

Commission Process:

On Friday, September 13, 2002 the Commission on First Nations and Metis Peoples and Justice Reform hosted a roundtable on Research at Wanuskewin Heritage Park. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations. An open discussion was held throughout the day.

General Information:

The purpose of the roundtable was to bring together leading authorities on the issue of First Nations and Metis justice to generate and share ideas with the Commissioners relating to justice reform. In return the Commissioners were to share what they have learned so far from the people of Saskatchewan and how they feel about the issues that have emerged. The only guideline in the discussion was that they look to the future, be broadly justice related and that they contribute to creating a healthy, just, prosperous and safe Saskatchewan.

Main Themes:

Question #1. What concerns do you have with the justice system?

- Programs do not look at the characteristics of an individual and match programs to their situation and consider the mix that can be combined to lead to the most successful outcome;
- This province locks up too many children and youth and another model that does not use corrections to control children and youth is needed;
- The issue of economics/poverty needs to be dealt with. Food and shelter need to be available before a family can look to the future. If it isn't, people will look at alternative ways of getting the basic survival necessities, usually through crime;
- Obviously the justice system is experienced differently by Inuit, Metis, and First Nation people across Canada than it is by the rest of the population;
- The system of justice has ignored that every Indian, Metis or Inuit that comes before the court has constitutional rights that need to be vigorously enforced;
- Once a person has done their time in jail, and turned their life around, gone back to school, and now want to work in the institutional setting, they are unable to do so. Criminal record checks keep many Aboriginal people from working at jobs in which they have experience, due to a criminal record.

Question #2. What examples of successes or positive programs have you seen?

- Before you can call a program a success you need to clearly define what the goals of the program are; what are the measures of effectiveness; how do we know that things are working; what are you trying to achieve in the program;

- A combination of conventional psychotherapeutic approaches and traditional approaches seems to be the best model;
- North Dakota has a program that avoids "institutionalizing" youth, rather they put them into "schools" giving them a community;
- Decent apprenticeship programs, mentorship;
- Supporting families within communities;
- Programs with stable funding that revolve around repairing relationships, addressing harms, and fostering healthy, safe, respectful sort of interactions;
- Use volunteers from the communities in a responsible, respectful manner, do not burn them out. Value their skills, background and experience they bring to programs;
- Successful programs in communities are where outside resources listen to the communities and help them achieve what they need;
- Tu Tangata program in New Zealand that works within the education system reacts to juvenile crime and drug use and is extremely effective in reducing juvenile crime.

Question #3. How do you think the justice system can be improved?

- Better follow-up services with respect to traditional healing once a person leaves the controlled setting of an institution. We need to go back to the values and principles of our cultures and listen to the Elders;
- Through bringing to the attention of those providing correctional interventions, a greater sensitivity about the individual differences and backgrounds of the participants in programs;
- Education and health need to become integrated with the justice system as a lot of the trouble that kids get into start in schools; their inability, or the school's inability, to adjust to them plus the epidemic of ill health in young people;
- Through empowering community; by using the healing projects that are out there — use a holistic perspective;
- Involving Elders in the schools, institutions, community centres to help heal families;
- By providing support to sustain mentorship programs, provide training for support workers who face the challenges in the communities;
- By creating partnerships between the provincial & federal governments, along with First Nations & Metis governments. Using this partnership to build relationships to strengthen supports within the community;
- To move forward in the justice system, if you want to get someplace in 25 or 30 years, you need to know the places that we would like to be in two years, in four years, etc. There needs to be short term steps in order to achieve long term goals;
- Aboriginal Attorney General to direct the defense of the constitutional rights of Aboriginal Peoples;
- Communities should be viewed on a needs-based assessment remembering to incorporate a holistic approach;
- Build on the success already out in the Communities like Hollow Water, Manitoba;
- Educate — through education people can learn about the different ways and values and develop respect for each other. "Change the thinking"

Question #4. How do you go about revitalizing the traditional ways?

- Traditional teachings in institutions are key in changing behaviour;
- Youth need to feel a part of society, they need a positive self-image and a sense of belonging that positive role models such as Elders can give them;
- In the traditional system of the Church there is a rigid role model that doesn't tolerate deviance and this structure helps turn kids around;
- In the Muslim tradition it brings in the strength of the family, religious adherence, and values.

Conclusions

- The Commission needs to look at their focus as being on the achievable versus the ideal;
- The Commission needs to be conscious of the roadblocks when dealing with the bureaucracy as well as in the political system. These people are going to be responsible for implementing the recommendations of this Commission. The Commission cannot be seen as working in isolation, it needs the support of its partners;
- Research needs to take an interdisciplinary approach for it to be meaningful to the Commission's work;
- The Commission should look at having a peer review panel for potential research projects and another peer review panel of the results. A process should be put into place where several experts in the field look over the proposed research you are doing and make sure it matches the standards that should be there;
- To attempt to match a program with the needs of a Community, you should in collaboration with the community, look at a bottom up approach based on the needs, the culture, the resources and the goals;
- The Commission needs to put forward successes and how they can be incorporated into Saskatchewan by using various methodologies available to each specific community. An example of this is the Won Ska Cultural School in Battleford;
- The Commission needs to demonstrate to the people who want to build more jails how positive change can be made and still create a safer, better society and reduce the need for incarceration;
- You need to find political "Champions" who feel the recommendations of this Commission are worthwhile and will push to get them done.

SUMMARY OF STAKEHOLDERS' ROUNDTABLE

Commission Process

On Monday, November 25, 2002 and Tuesday, November 26, 2002 the Commission on First Nations and Métis Peoples and Justice Reform hosted a roundtable with the core group of stakeholders at the Travelodge Hotel in Saskatoon.

General Information:

This was the second stakeholders' roundtable, the first was held on March 12 and 13, 2002. The purpose of the roundtable was to bring together people representing as many interested parties as possible within the communities of Saskatchewan. The stakeholders group was created by the Commission to explore possible reforms to the justice system and ensure the recommendations of the Commission are forward looking.

At this roundtable the stakeholders were asked two questions:

1) Where can the Commission improve?
2) What has been done right so far?

Main Themes

- The federal government should be involved, particularly in First Nation communities. Concern was raised that without federal involvement, the Commission loses a lot of credibility.
- There should be more public awareness of the Commission. This included communication about the reason for the Commission, the terms of reference and about upcoming dialogues, presentations and roundtables.
- Ensure that as many communities are covered as possible. This was of concern as well as the fact that the timeline for dialogues is actually shorter than it appears. Also of concern was the fact that many of the real issues in Aboriginal communities are not being heard because only particular portions of the communities are willing to participate in public dialogues, and many are not aware of the in-camera interviews.

General Analysis:

- There should be more follow-up after the dialogues by the FSIN, ANJI and the MNS. Of particular concern was the fact that during dialogues, many of the participants opened up old wounds to the Commission, and there were no supports for them afterward. There was also concern expressed about the safety of community residents after dialogues.
- The stakeholders' roles should be expanded and clearly defined. This is particularly the case when planning to visit communities when stakeholders can be utilized as contacts.
- Police, prosecutors and youth should be more involved in the process at dialogues and stakeholders meetings.

- The Commission should keep international human rights issues in mind while doing their work.
- Update the website more often and include a page for feedback.
- The Commissioners need to be more unique so as to avoid appearing like other commissions and inquiries, which according to many of the stakeholders did not make much difference in their communities.
- Implementation of Recommendations:
    - The stakeholders were asked to discuss what an implementation mechanism, vehicle or process would look like. The Commission would like to have identified the mechanism for implementation before the release of their final report.
- The stakeholders largely agreed that implementation would have to be legislated. Ideas for an implementation vehicle included:
    - An Ombudsman type organization that was independent from government and community driven;
    - Integrated group that consists of different players in the criminal justice system as well as government and communities that is community driven.
- Much of what this vehicle will look like depends on the nature of the recommendations, keeping in mind that there will be long and short-term recommendations.

Community Issues:

- Concerns about the Commission:
    - Communities need more advance notice about the dialogues, and more communities should be involved at the dialogues. This suggestion included informing the stakeholders regularly, some of who claimed they had not received a copy of the first interim report.
- The Commission needs to make more of an attempt to meet:
    - frontline workers (instead of just directors and managers);
    - people on the street in their communities in day to day life;
    - northern communities for example: Black Lake;
    - Women's Groups and organizations;
    - More organizations.
- Things that the Commission is doing right:
    - Going out to communities to hear from community members.
    - Involving community stakeholders.
    - Focusing on youth.
    - Visiting different institutions and organizations such as the Regina Correctional Centre and Paul Dojack Youth Centre.

SUMMARY OF RACISM ROUNDTABLE

Commission Process:

On Thursday, January 16, 2003 the Commission on First Nations and Métis Peoples and Justice Reform held a roundtable on racism at Wanuskewin Heritage Park. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations. An open discussion was held throughout the day.

General Information:

The roundtable was divided into two parts. The morning session dealt with questions on "What is racism, and why is there racism?" and the afternoon was spent discussing solutions to racism.

Main Themes:

Commission Chair, Willie Littlechild introduced the difficulties in defining racism by recounting problems with the term "racism" itself. He stated that there is no word for racism in Cree. That is, there is a continuum of attitudes and behaviours from bias to hate crime. Willie Littlechild also stated that the Commission believes racism is at the heart of the criminal justice problem in Saskatchewan, the reason being that the system has been evaluated repeatedly, and nothing has changed.

Definitions/Descriptions of Racism:

There were a variety of definitions given for racism including "an attitude or bias held by individuals, institutions or organizations based on perception of racial or cultural differences". Other ideas about racism included the statement it is often subtle, and that it is intergenerational. That is, it is passed from generation to generation, often unintentionally. For example, an Elder at the roundtable noted that some of the nicest people that she knows have racist inclinations. She feels that racism towards Aboriginal people can often come from ignorance about one's own cultural roots, and that when one has little knowledge or appreciation for their own culture, ancestry or history, it is difficult to appreciate other people's beliefs. This kind of misunderstanding can lead to a spectrum of beliefs and behaviours about other people. Racism can be plain ignorance, fear, pride, lack of respect and understanding.

Although many definitions for the term racism were offered it was hard to be conclusive as racism takes on so many forms and is used to explain everything from discrimination to xenophobia to stereotyping and ignorance generally. Racism can be overt or covert. Its silent form can take over institutional practice and policy development because the beliefs upon which it is based are not openly discussed, and the assumptions are pervasive. It can come from individuals or from institutions. Racism is universal and must be cured from a small scale onto the larger one. It is found in sports, recreation, employment, grocery stores, churches, police departments and other judicial and government institutions.

It is the negative aspect of relationships and it was felt that it is so often either accepted or ignored and therefore it cannot be dealt with. People react strongly to the term and it closes down discussions and conversations to the point where we cannot work around it any longer. It comes from hate or from the best intentions to "help". It is based on a lack of respect and ignorance and possibly fear. It comes from no common ground and little or no education on the history of the race that is oppressed.

Solutions to Racism:

Participants identified education and interaction as the main methods for overcoming racism. Such education could include cross-cultural and race relations training and workshops, particularly in those places where there are Aboriginal clients and employees.

There was some debate about the effectiveness of employment equity. Many feel that increasing the number of employees in the criminal justice system makes it more representative of Aboriginal people, whether Aboriginal representation is increased in entry or front line positions, or in professional and management positions. Aboriginal participants stated that there are problems with this, particularly where they are seen as a representative of a broader population. Other participants noted there is a lot of resistance in the workplace to employment equity because many non-Aboriginal people feel that Aboriginal people who fill such positions are under-qualified. Others stated there is often resentment amongst existing employees with more seniority who feel that they lose out on particular positions due to employment equity.

Education leads to understanding. Understanding leads to respect. Respect for the differences and strength from our commonalties will stop racism. Complacency about racism allows it to continue – if you have never experienced it you will not know the impact it has on every aspect of your life. Challenging your own perceptions is the place to start, as an individual or as an institution.

Media Release of Racism Position:

The Commission also circulated an article that it released to the media entitled "Racism in Saskatchewan". The article was published in The StarPhoenix in Saskatoon on Friday, January 17, 2003 and the headline read "Time to find solutions to racism in justice system".

In the article the Commission identifies three types of racism:

- "Heroic racism" is a "vain attempt to shore up a weak self-image at the expense of others". This would likely include incidents of overt racism.
- "Systemic racism" is racism that exists in institutions that are "accused of targeting one race or culture for harmful consequences."
- The third form of racism that the article speaks to is the failure of people to speak out against racism when they witness it.

The article further states that these three forms of racism contribute to the high rate of offending, victimization and incarceration among the Aboriginal populations in Saskatchewan, and puts forward several solutions including education, cross-cultural and race relations training. Finally, the article appeals to the Saskatchewan public to share ideas about racism and how to deal with racism in the justice system.

Racism in Saskatchewan

Throughout our travels as a Commission we heard a consistent message from Aboriginal people: racism is alive and well in Saskatchewan and it infects the justice system.

Racism is said to be a complex issue, but for me it boils down to the powerful and evil belief that one race is inferior to another, that certain people are not entitled to even their most basic rights. When that belief is acted upon, cruelty and other forms of negative and destructive behavior result.

Where does that belief come from? And why do acts of racism flourish in communities and organizations that condemn it? More important, what can we do about this evil?

I suspect part of the problem is people do not recognize racism when they see it. How do you distinguish racism from rude and obnoxious behavior? What about petty and vindictive behavior? And even if you can tell racism from other forms of prejudice or destructive behavior, what do you do as an individual or as a community?

It has been suggested to me there are three types of racism. The first tries to be "heroic" but is merely a vain attempt to shore up a weak self-image at the expense of someone else. Sometimes heroic racism is motivated by the desire to avenge some real or imagined wrong that has been committed.

The second is "systemic" racism. Here many institutions are often accused of targeting one race or culture for negative or harmful consequences. Racial profiling comes to mind and so does the streaming of children in the education system for second or third class treatment.

The third is so "ordinary" it almost always escapes everyone's attention. It is evil when decent men and women of Saskatchewan remain silent when obvious racist comments or attacks are being made. By staying silent these decent people become the unwilling yet greatest ally of the bigot. Their silence empowers the racist.

How does this relate to the justice system? It seems logical to me that these three types of racism might contribute to the high rates of incarceration of Aboriginal people. Individually or in concert, each of these types of racism could also contribute to high rates of offending and victimization.

We are still left with the question of what to do.

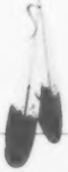
Education is often cited as the key to combating racism. If only we could educate those who are misinformed, perhaps train them in more effective and compassionate forms of behavior, then racism will be eradicated from the face of this beautiful province. I believe there is some truth in this belief, but is it enough?

In the last twenty or thirty years we have seen governments, businesses and communities take up the challenge to launch cross cultural or race relations training programs. The groups and the individuals leading these efforts are to be applauded for their courage and vision. I have no doubt some hearts and minds have been changed as a result of their good work. But is this enough?

Some leaders, officials and activists express concern that more should be done, that this good work is running up against subtle, yet stiff resistance.

As the Chair for this Commission I am issuing a formal plea to you the citizens of this province to share with us your ideas on how this critical issue in the justice system can be improved.

The week of January 13, 2003, marks the beginning of a dialogue on this troubling issue. We have invited a few organizations to share with us their ideas and programs, and we also invite you to participate.



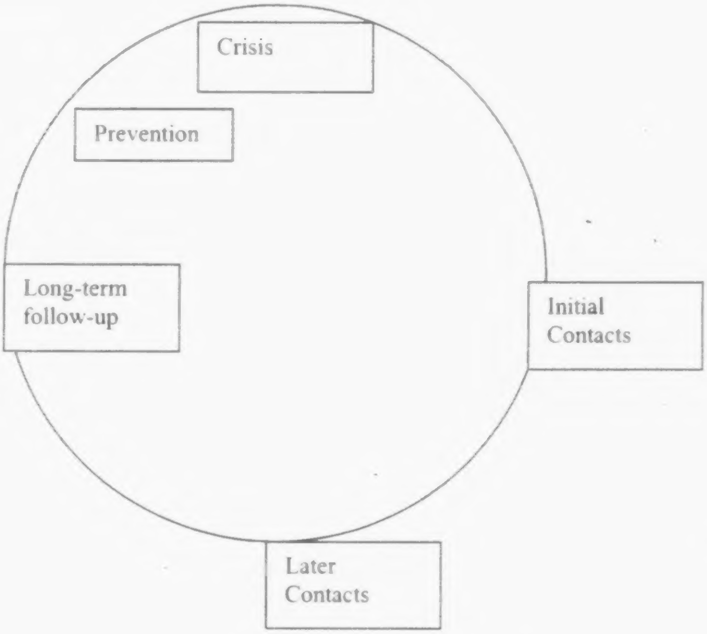
SUMMARY OF VICTIMS AND VIOLENCE ROUNDTABLE

Commission Process:

On Tuesday, February 11, 2003 the Commission on First Nations and Métis Peoples and Justice Reform hosted a roundtable on "Victims and Violence" in Regina. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations as well as Elders and youth representation.

General Information:

Victimization was presented as a circular process:



The issues presented were related to who was involved at which stage. For example, who is the victim at crisis, who is contacted first, who is involved as resource at later contact (i.e. Elders, other counselors), and who is involved in the long term as a preventative measure.

The questions posed by participants were as follows:

1) Identify who participants see as victims
2) Identify the resources in the community for victims (existing strategies, processes, policies)
3) Identify the resources that should be developed or included in the community
4) What are some proposed next steps for moving these solutions forward?

Main Themes:

Topic One – Who is a victim?

There was a wide range of answers for this question including children, children and youth involved in the sex trade, mothers, and families and friends who are affected by victimization of someone they care about. There is a fine line between victim and offender. Victims are people who suffer harm, distinctions are drawn between harm done to property and harm done to people. Harm can be physical, sexual, mental, emotional, spiritual and intellectual. This can break some people to the point where they do not recover and it becomes a way of life. Others survive in varying degrees.

Many offenders are also victims. One person who works with youth gave the example of a time one of his foster children destroyed his car with a heavy chain. His insurance covered the costs of the damage, and the youth went through the criminal process as a result. However, the worker noted that he had not really felt victimized because his car was repaired, but when one considered the youth's history of abuse and growing up on the streets, in the system and in a dysfunctional family, he felt that the youth was the real victim.

Similar examples were given in regards to sexual offenders who had themselves been victimized, and then went on to victimize others. Many participants stated they felt the residential school system was the original source of victimization in many Aboriginal communities and families.

One participant also mentioned that the government, through the history of neglect, has victimized the North, and that this victimization has been a violation of the basic human rights of the residents. Following that logic, it was mentioned that one should also look at victimization and what victimization really is. For example, victimization can be a form of interpersonal violence including murder or physical abuse; or it could be neglect. It could be allowing someone else to live with feelings of a lack of self-worth.

Victimization is passed from generation to generation. Through the perpetuation of victimization, violence and victimization becomes normalized. Part of the continuity of victimization, particularly among youth, is the lack of parenting skills in the Aboriginal community. Many Aboriginal parents either do not have adequate parenting skills (due to residential schools) or feel that they are unable to discipline their own children because of the threat of intervention, apprehension or prosecution. It was felt that the various interventions that are designed to address victimization could also be processes of victimization. For example, when children are removed from homes that are violent, children and their parents feel further disempowered and victimized. Similarly, courts victimize youth that go through the court process, often because they cannot afford adequate legal representation or because their parents are not present, neither of which are the fault of the youths.

As with the example of the North, entire communities can be victimized.

The term "victim" was also discussed. Many who have been victimized do not like being referred to as victims, but as survivors. True victims are those who give up, who are lost to addictions, or who commit suicide.

Other themes about victimization:
People, particularly youth, can be victimized by the criminal justice process in the following ways:

- They report abuse by police;
- They often have to attend court alone;
- They have less access, due to financial inaccessibility or backlog, to legal representation;
- English is not their first language, and legal and criminal justice language is difficult for anyone to understand, particularly for those youth for whom English is not a first language.

Finally, in relation to the victimization of whole communities, it was stated that communities, particularly women, were victimized when the church and government were given responsibility for family and domestic violence.

Topic Two – Identify the resources in the community for victims

The list of available resources included:

- The Wrap Around Program (Dept of Social Services)
- Regina Family Services Domestic Violence Outreach Program
- Lighthouse Tabernacle
- Child and Youth Services
- Choices for Men (La Ronge band)
- Alternatives to Violence (Mental Health)
- Anger management program (Family Services)
- Peyakowak (Circle Project)
- Children Who Witness Domestic Violence (YWCA)
- Interval House
- Transition House, Isobel Johnson, Sophia House
- Emergency Intervention Orders
- Victims Services
- Tamara's House
- Infinity House
- Indian Child and Family Services
- Local community resources such as access to Elders, ceremonies
- Victims of Domestic Violence Act
- Sexual Assault (crisis line)
- Victims of Sexual Exploitation Act

Topic Three - Identify resources that should be developed or included in the community

There needs to be more services in the North, especially because domestic violence is a huge problem in the region. There are some services, however, they are usually delivered by personnel from outside the community. It is felt that in

any community, services should be developed in consultation with community, including victims. Communities do not want to be helped, they want to be supported so that they can help themselves. Respite homes would be useful in the North, particularly since it is felt that many of the foster homes up North are as bad as or worse than the homes from which children and youth are apprehended. There are no reunification programs in the North that is, there is no assistance for families who are in the process of reunification after separation due to crisis.

It was widely expressed that the family should be the focus of intervention. It was noted that it seems like the Department of Community Resources and Employment is willing to put money into foster care, but not into resources that assist families to work together.

There also needs to be services for men. The male role in domestic violence issues is often ignored. There is a need for male leadership among the leaders. Responsibility for social issues are often passed on to women's groups, overlooked or ignored. It is felt that this is often due to feelings of shame among male leadership. The problem is so bad in the North that one northern participant noted that there are "no prostitutes up north, sex is taken." Many times, communities deal with the issues outside of the formal legal system in a manner that was referred to as "Indian justice." Many times, the problem is ignored.

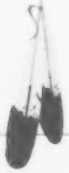
Many health care professionals deal with sexual and physical abuse on the front lines. However, there is little capacity to deal with these cases on a long-term basis, which is particularly a problem in the North. Often, the response from the Department of Community Resources and Employment is a search for further evidence but little else.

More specific needs mentioned included:
- Sexual Assault Centre
- Child-friendly RCMP and Victims Services. Although these resources exist in many communities, it is reported that many clients report different forms of systemic racism, and that there is resistance and discomfort with these services. As such, many communities would like to see more First Nations staff.
- Children's Justice Office
- More traditional Elders counselling. There is a movement to return to traditional ways, but the system does not recognize Elders the same way that they recognize other professionals.
- The system needs to recognize that there are different ways to work with offenders, ie. Elder's counselling.
- Better privacy and confidentiality rules. Currently, confidentiality rules prevent the sharing of information between organizations. As such, support services work only with the information that they receive from the client, and such information can be incomplete and the client's needs cannot be properly addressed. This also contributes to the fragmentation of services and communication problems.
- More wrap-around services. This is a client-centred approach that recognizes the needs of clients based on their strengths and the support of their personal networks.

- Racial and cultural awareness training for staff who work with Aboriginal victims including social workers, police, corrections and justice personnel.
- There needs to be violence education in schools from an early age.
- More efficient court process. Many times court cases are delayed and by the time they are addressed, the offender is in a new relationship.
- Services need to focus more on prevention. Much of what exists is reactive.
- Better consultation processes with community to find out what they need and not what government thinks they need.
- Need to access those resources and skills that exist within the community. Community resources and skills are more representative of community needs.
- Extended hours. Many government and non-government organizations are available from 8 a.m. until 5 p.m. Monday to Friday. These hours are not the times when a crisis usually occurs.

Topic Four – What are some proposed next steps for moving these solutions forward?

- Education about criminal behaviour (particularly violence/abuse of all forms), racism, drugs and alcohol.
- Communities have to be trusted to find the answers for themselves. "Why do they expect us to fit into already-made programs that don't work for us?"
- Consult Aboriginal leadership and communities.
- Realign existing resources (improve communications) and invest in communities in preventative programming.
- Need better reintegration for offenders and reunification processes for families
- Consult the proper Elders, help to make them accessible particularly in urban centres.
- Create a process for transferring dollars to local authorities to create services for their communities.
- Create a system that is healing and not punishment based.
- We need more programs for children who witness violence.
- More emphasis on positive reinforcement.
- Implement self-government for First Nations people. Knock down INAC and send the funds to the NAD.
- Make a 24-hour 1-800 line to provide referrals.
- Integrate the existing programs and improve communications.
- More training for police so that they will look at all contributing factors i.e. Alcohol.
- Look at alternatives to what we already have. For example, why not hostels instead of a drunk tank?
- Alternatives to incarceration, i.e. Elders camps.



SUMMARY OF POLICING ISSUES ROUNDTABLE

Commission Process:

On Wednesday, March 12, 2003, the Commission on First Nations and Metis Peoples and Justice Reform hosted a roundtable on policing issues at Wanuskewin Heritage Park. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations.

General Information:

The questions that were addressed were:

1) Perspectives on policing
2) Positive things in policing
3) Solutions: policing problems and how to take solutions to the next level
4) The Commission's Implementation Phase: Opportunities, Barriers and Responsibilities

1. Perspectives on Policing:

Problems expressed about policing included:

- Many people feel that the police complaints process should be independent from the police services. There is the perception that complaints are not investigated in good faith, particularly when police carry out an internal investigation. There needs to be an independent advocate to support people making complaints.
- Aboriginal people do not feel comfortable with current complaints processes. The RCMP Police Complaints Commissioner offered that there have been no complaints from Aboriginal people from Saskatchewan in 14 years, and only 50 complaints in total. She believes that this is due to the reluctance of Aboriginal people to exercise their rights in this respect.
- Response time, particularly in the Northern Administration District (NAD) is bad. Calls coming from the NAD are often rerouted to Regina and they involve long delays. As well, there are language barriers as many NAD residents speak Cree or Dene as a first language.
- Although stand-alone policing is available as an option for many communities, there are often deficient resources to support it. (Comment from Manitoba)
- There is a lack of understanding of one another (Aboriginal, non-Aboriginal and police) and as a result there is hesitation to mediate. Police are more aggressive to charge as a result.
- Lack of understanding can affect the prioritization of calls. For example, one woman called the police because there was a party next door and she was a single mother home alone with kids. She had to wait and wait, and when a man from the party next door came to her home she hit him on the head with a baseball bat. Only then did the police come.
- There is a lack of openness by the police towards Aboriginal leadership and community. There is a need for open dialogue between police and communities in order for them to understand one another and improve relationships. Good

relationships also help officers understand more fully the community context of their work. Officers need to police communities according to the context of the community, not according to official regulations.

- Police are not utilizing the full resources of community due to lack of trust. Communities are capable of doing much more than they are entrusted or resourced to do.
- There should be store-front offices in Aboriginal communities.
- Police need to be more involved with communities, particularly with youth. Youth need to feel more important and need a relationship with police that goes beyond investigative work.
- There is racism in policing. It is important to note that racism does not come from policing culture, it comes from non-Aboriginal mainstream culture. If there is more participation in community cultural events by police, racism will disappear with understanding, interaction and connections.
- Police management boards and community police boards are badly under-resourced, especially in northern communities where travel is difficult and expensive. The people who sit on these boards are volunteers and they suffer from high levels of burnout.
- The lack of consistent budget cycles between federal and provincial government makes accessing funding difficult. The difference in criteria for funding between the two governments further complicates access.
- Hiring Aboriginal police officers cannot be a simple cosmetic process, there has to be cross-cultural awareness.
- There is a lack of drug and alcohol enforcement by the RCMP in the NAD. There is a general feeling that "bottom of the barrel" officers are sent up north because others do not want to go. Police officers posted up north burn out as well due to high workloads and relationship problems with community.
- The police need greater resources for the implementation of the *Youth Criminal Justice Act*. There also needs to be more crime prevention activities and capacity building in communities. There is an uneven application of diversion due to the differing levels of capacity available in communities.
- The offences that are eligible for alternative measures need to be expanded to include domestic violence cases.
- Many justice programs, services, policies and legislation reflect conservative middle class non-Aboriginal viewpoints of the people who design them, and as such, do not adequately meet the needs of the people they are supposed to help.

2. Positives on Policing:

- The First Nations Policing Program - having officers in the community, particularly where they can act as role models, is working.
- There have been some good initiatives coming out of community police board work. For example, the banishing of glass beer bottles in La Loche has ensured that "broken bottles are no longer the weapon of choice."
- Interagency initiatives such as the Domestic Violence Unit with the Regina Police Service are successful. Agencies can share information with one another keeping everyone better informed in terms of client and community needs. Such relationships prevent antagonism between agencies making work/projects/initiatives more difficult to criticize.

- The domestic violence training that RCMP took in the Saskatoon area improved the service of those who needed assistance in domestic violence cases.
- Ongoing cross-cultural participation improves understanding of and relationship with communities.
- Police interaction with youth has helped decreased crime statistics in some communities.
- Specific items mentioned as successes include:
    - TARGET (due to partnerships involved)
    - Alternative dispute resolutions
    - Cadet Corps
    - Elder ride along with police in the community
    - Funding parity with RCMP (for stand alone policing)
    - Security Forces (Onion Lake)
    - FSIN, Saskatoon Tribal Council and Saskatoon City Police crime prevention initiative (based on medicine wheel philosophy)
    - Recreational activities involving police officers and youth
    - Regina Auto Theft Strategy
    - Community Tripartite Agreements (CTAs) (there was comments stating that these are good in principle but are under resourced)

3. *Solutions: How to take what's working to the next level*

There are two aspects to this. There are policing problems internal to the police services and perhaps police culture; and there are problems that police have with communities.

- Need more funding resources. More funding should be redirected to community.
- Study the cost of doing nothing.
- Criminal justice issues do not originate in the criminal justice system, we need to address the roots of crime. For example, there is a lack of treatment and detoxification centres, particularly for youth.
- Need to work from bottom up and not the other way around.
- There is a need for continued partnerships with stakeholders, including communities and not just community leadership. Political agendas often differ from community agendas. This is crucial to the continued improvement of program delivery and design.
- Need to incorporate traditional methods of dealing with problems into the justice system i.e. Healing/community/talking circles.
- First Nations people should exercise their treaty rights to administer their own justice.
- In order to make them more familiar with views other than middle class non-Aboriginal conservative ones, officers must be immersed in the environment that they police. Because officers don't usually do this voluntarily, they should be directed to.
- Police services must act in an assisting manner to mobilize communities. They can do this by assisting community justice committees, criminal justice workers and justice co-ordinators in preventative ways (crime prevention?).
- Youth should be more involved and learn more from hearing people discuss problems. This applies to community policing/crime problems, traditional ways of approaching problems and traditional cultural ceremonies.
- Should establish a province-wide Aboriginal police service.

- The RCMP Act needs to be changed to make the investigation of police complaints more transparent.
- The Edmonton Police have a civilian police complaint officer, this allows the public to be a part of the process from the beginning.
- Educate children from kindergarten up to prevent stereotyping and discrimination.
- Eliminate 12-hour shifts and privatization.

We need to spend more money on healthy homes at the start of life rather than jail.

4. *The Implementation Phase: Opportunities, Barriers and Responsibilities*

- A common vision of what change will look like needs to be developed.
- The political will needs to exist along with the appropriate funding to avoid designing failure into the model.
- Policing needs to work with other tools in the community to develop community. Community development is at the core and failure is not an option.
- Take money saved with diversion and put it back into the community to develop crime prevention programs.
- There was a caution here about moving through a transition like this without establishing clear boundaries.
- The resurgence of traditional lifestyles/beliefs and the calls for Elders are an opportunity that needs to be developed. The values are healthy and sustainable, and assist in the building of community. Stereotypes will disappear and support will increase when the non-Aboriginal community sees Aboriginal values working.
- Aboriginal people must be involved in the design of services and not just the delivery.
- There needs to be Aboriginal advice and involvement at the executive level of government, particular where policy is designed.
- There should be a consideration that mediation is mandatory, the immediate response.
- There needs to be a review of existing legislation.
- Re-evaluate Saskatchewan's police complaints investigator's office.
- Territorial walls between the FSIN, MN-S, RCMP, police services, municipal, provincial and federal governments, need to come down so real communication can occur.

SUMMARY OF RESTORATIVE JUSTICE INITIATIVES IN SASKATCHEWAN ROUNDTABLE

Commission Process:

On Tuesday, March 18, 2003 in Regina, the Commission on First Nations and Métis Peoples and Justice Reform hosted a roundtable on Restorative Justice Initiatives in Saskatchewan. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations as well as Elders and youth representation. An open discussion was held throughout the day.

General Information:

The Commission hosted a roundtable to discuss a different way of doing justice, a non-confrontational approach as opposed to confrontational. The questions addressed at this roundtable were:

1.) A perspective on restorative justice ideas, concerns and the participants' understanding of what restorative justice is.
2.) Give some examples of successful restorative justice initiatives in Saskatchewan.
3.) What are the solutions to the issues that are associated with restorative justice in Saskatchewan?
4.) Identify some implementation long and short-term strategies for the Commission.

1. Perspectives on Restorative Justice

Everyone was asked for his or her views on restorative justice in Saskatchewan. Following are the main points from this discussion.

- Youth are not being heard when appearing in court. There needs to be a way that they can become involved in the process and find a better way of doing business. Possibly with the new Youth Criminal Justice Act, the shift to conferencing will open different relationships between the parties and the youth will have an opportunity for their voice to be heard;
- Mediation is a potential tool that needs to be developed more. The potential to restore and build trust and a sense of safety through mediation versus the more traditional adversarial role will give people the information to become more involved and take responsibility;
- A community needs to become more involved with the youth. Building relationships and working together to keep youth active and involved will help in reducing crime;
- For a successful restorative justice program to work, the people involved must be ready to change. There needs to be willingness on the part of the participant. If there is any addictions involved, this needs to be dealt with before the restorative justice process can work;
- The time frame from arrest to sentencing for youth needs to be reduced significantly. Currently, by the time a youth goes to trial, what they have done was so long ago they have no connection to it any longer. Also, if a youth has

cleaned up their act, having to go to court six months later and being sentenced to jail will be a negative influence on their lives and reverse the changes they had been making;

- Restorative justice is working with individuals in their communities and trying to restore those relationships and making people accountable for their behaviors in their own community. Restorative justice needs to restore the balance in the individual in a holistic way;
- Hosting camps in communities so youth can learn to appreciate the gift of life. The use of life skills camps as an alternative to locking up youth need to be used as teaching tools. Children should not be locked up like animals, they need to be out training, running, involved in sports and other positive activities;
- Programs and processes that deal with fairness and about restoring or building harmony, that include or involve the community;
- Programs that are future focused on the healing and the building versus focused on the past mistakes;
- For restorative justice to work we are suggesting that you have to go back to community and you have to look at traditional authorities and involve them in design and development.

2. Examples of Successful Restorative Justice Initiatives in Saskatchewan

- Regina Alternative Measures Program (RAMP)
- Conferencing program in Moose Jaw
- Cree Court which operates in the North
- Tsuu Tina as an example of moving a court into the community
- RCMP community conferencing in the North
- The La Loche Model
- Youth Offender Restoration Program
- The Street Culture Program in Regina
- EGADZ in Saskatoon
- Victim-Offender mediation
- Saskatoon Community Mediation Services
- Circle Court (Courtroom #6) in Saskatoon
- Operation Help
- HEAT, the auto theft program in Regina
- Graffiti Busters in Saskatoon
- Standing Buffalo model of sentencing circles
- Day Star model   Elders working with individuals
- In Search of Your Warrior   program for men who batter
- Public Legal Education Association and their League of Peaceful Schools project
- Thunderchild and their talking circle
- White Buffalo Youth Centre

3. What are the solutions to the issues:

- Involving community – educate the community on models of successes;
- Community accountability and support – involve community in the beginning and conclusion not just during crisis;
- There needs to be a vehicle for the voice of change, for the voice of restorative justice;
- More involvement in the arts for youth.
- Setting up conflict resolution centres;
- Permanent funding for programs;
- Restorative justice has to be about change – we have to change attitudes;
- Barriers need to be dealt with such as poverty, education, peer pressure and addictions;
- Increased cultural awareness and education, teaching young people responsibility and guiding young people;
- Find something good to focus on and not just the negative. Youth need something to build up from so focus on positives;
- Early intervention in the court system;
- Have the media promote positive things rather than negative things. There is a need to focus on changing negative attitudes;
- Increased use of community-school approach;
- Work with existing successful programs and not continually creating new programs. Ensure funding is established so the programs can focus on the issues and not trying to continue their existence;
- Pay kids to finish school. Include an all-Aboriginal school as an option where youth can learn about language and culture;
- Use the Big Brother format and have successful youth working with and supporting first time offenders;

4. Implementation phase of the Commission's work – short and long term strategies:

- Communities need the tools and the skills to be able to resolve their own conflicts;
- Healthier communities – everybody has the right to be part of the decision and part of the result;
- Pride in the community – a healthy community can support youth so they can be more positive and capable, have a sense of growth and belonging;
- Shared leadership and power – respected leadership;
- Permanent funding of programs so the focus can be on frontline service delivery and not on administration problems;
- The community attitude needs to be one of hope and have a feeling of empowerment. If you share the decision making, then this would lead to a more hopeful attitude;
- Review federal-provincial agreements for funding that could be used to support or link a variety of different kinds of restorative justice initiatives with other things dealing with human services and social or economic development in a way that helps Saskatchewan move forward;

- Educate private sector to understand that if you have healthy communities then these communities are good to invest in for economic reasons. If a community is healthy and growing then businesses will naturally move to these communities;
- Have a forum where government departments, federal and provincial, can talk and work together;
- Educate the public, let them know change is a good thing and not to be feared;
- Work with community agencies currently not willing to look at changing their mandate or their vision for fear of losing something;
- Work with the media to overcome the negative connotations of change and get them to support and make it positive in the public eye;
- Help communities to develop and become healthy so they can successfully attempt to work on restorative justice issues;
- The Implementation Vehicle the Commission puts forward needs to have a mandate to go out and implement the recommendations and to call on the different government departments and outside organizations and ask them what they are doing, and be able to look into that and to be able to report back to the public and to cabinet on progress;
- We need to empower communities to feel good about themselves and what they are doing. Listen to people, listen to our youth, let's treat them like they are our future and give them a voice.

SUMMARY OF CRIME PREVENTION ROUNDTABLE

Commission Process:

On Tuesday, April 15, 2003 The Commission on First Nations and Metis Peoples and Justice Reform held a roundtable on Crime Prevention at Wanuskewin Heritage Park. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations as well as Elder and youth representation. An open discussion was held throughout the day.

General Information:

The Commission hosted a roundtable on Crime Prevention to acquire ideas and proposals that will lead to improved relations between Aboriginal people and the police and that will lead to safer communities in Saskatchewan. The areas addressed at this roundtable were:

1.) Perspectives on crime and crime prevention in Saskatchewan
2.) Constructive crime prevention initiatives in Saskatchewan
3.) Solutions and other proposals
4.) Implementation phase: opportunities, barriers and possibilities

Main Themes:

1. Perspectives on Crime and Crime Prevention in Saskatchewan

The first discussion was around crime and crime prevention in Saskatchewan. The basic thrust of this conversation can be summed up in a fortune cookie saying: "Society creates the crime and the criminal commits it." In some ways, rules create crime – instead of treating addictions as a mental health issue, addicted people are criminalized. The definition of crime, according to one group, revolves around the effect it has on people in crime. Ultimately, crime affects those who commit crime more because of how that person is brought up, whether it is in a home with domestic violence, substance abuse or other such problems. The tendency is to look at crime one-sided but it affects the whole community. When a crime happens, the tone of community changes, to the point where a community is happy when the offender is jailed again. Hunger and racism are crimes in the sense that they are against human rights. Who is the criminal in hunger? Are communities responsible for not finding effective ways to distribute the wealth? Crime is committed against individuals and the collective whole. Some people commit crimes so they can go back into correctional institutions because family is there, jail is a safer place, and there is food available.

Effective crime prevention focuses on affordable housing and soup kitchens. Prevention services aimed at at-risk-youth are important in the areas of alcohol addiction, substance abuse and other mental health issues. Activities done for free are often the most effective crime prevention methods. Extracurricular activities, transportation and lunches and suppers throughout the week are all essential elements of effective crime prevention. Crime prevention activities that lack a strategy can turn into babysitting services, though. Youth need involvement in their communities, to give them a sense of ownership of the future. A study done to determine what it would take for youth to remain in Saskatchewan found that youth want to be able to contribute, make decisions, and feel valued by the community and that the future is theirs. Adults need to start thinking of youth as people who have something to contribute, not as "at-risk." Youth commit crimes because they are bored, they have no one to guide them and/or they want someone to pay attention to them. These problems require investments of time, not money. For example, one twelve-year-old girl was very disrespectful and refused to go to school. After some intensive one-on-one intervention by another person, she started going to school. Treating young people with respect and credibility improves young attitudes. Everyone is at-risk for committing crime – even upper class youth are neglected sometimes. Although some people are inclined to blame parents for neglected youth, sometimes **parents do not have enough supports.** It is important to focus on youth regarding crime prevention but people must not forget about the context in which youth live. Youth carry with them crimes committed in the household such as sexual abuse and family violence.

Crime prevention is difficult to define. It covers participation in school, healthy families, and healthy communities. Crime prevention is intervention that enables individuals to make choices, caring for people without judgement and rebuilding communities. Our society is segregated and government policies enforce the segregation by assigning bureaucratic identities to people (status, non-status, Metis, Inuit). When Aboriginal people are young, those bureaucratic identities do not mean much. It is only after people are old enough to understand those identities that they become important. For example, in one person's Grade 4 class, they were asked to identify what "race" they were and if they felt uncomfortable to whisper it to their teacher. This person at the time did not understand why anyone would be ashamed of his or her "race". These kinds of actions are damaging to young egos and contribute to feelings of alienation. This can often mark the beginning of the formation of a racialized identity. Relationships between the non-Aboriginal and the Aboriginal communities have to improve, as some communities refuse to have coffee with people from neighbouring reserves. Parents shape children's worldviews by teaching youth that some people are different and to not associate with "those" people. What can result is a young person who does not feel as if they belong anywhere – not belonging in the non-Aboriginal community because of skin colour and not belonging in the Aboriginal community because of skin colour and/or values. The ignorance of each culture ends up separating and isolating people. Ultimately though, crime prevention cannot be restricted just to racism. It encompasses other social ills such as the urban/rural division and class positions. Some people do not know that it is not okay to hit people because they have seen it while growing up. To raise positive community members requires positive attention. Each of the different community resources available are all working to this same goal. Different responses are necessary for different people. Effective coordination of current resources is a good step forward for community development and healing. It is important that community resources concentrate on what they can do instead of trying to do everything, especially considering the wide array of services in some communities. In some ways, rules create crime – instead of treating addictions as a mental health issue, these people are criminalized.

2. Constructive Crime Prevention Initiatives:

- Saskatoon Native Theatre
- Big Brother Societies
- Neighbourhood Watch
- Sports, recreation, arts
- Core neighbourhood youth co-ops
- Cooperation between community centers
- Kamamakus
- Youth outreach counselors
- Waskegun Youth Development Center
- Eagle program
- Street outreach projects
- Community schools
- White Buffalo Youth Lodge
- Schools^{Plus}
- SHOCAP
- Restorative justice
- Compensation for children doing well in schools
- Stable, long term funding
- Spiritual programs
- Egadz
- employment
- career development
- theater groups for acting, music, dance
- Street Culture Kidz
- friendship centers
- life skills training
- Lucy Baker alternative school
- proper nutrition
- Kinsmen Hockey League
- homelessness project in Regina
- Grandmothers Program
- Alternative measures
- Operation Target
- transitional program (institution to release)

3. Solutions And Other Proposals:

One major concern for front line agencies is funding. There is no stable funding for programs. Yet, the government has shifted the onus for rehabilitation and/or prevention programs onto community resources. Funding could be made available on a yearly basis for programs because there are always government funding grant programs. What some agencies do is take the same program that has worked for the past year, change it slightly to fit the new criteria or give it a new name, and then apply for funding under the new government grant program. This also creates competition amongst agencies for funding which is not conducive to team building among community agencies. Then, programs are about funding, not the youth. Community agencies would like to share resources and networks. Different outlets appeal to different youth so a variety of community agencies are necessary. Also, society is investing money in the wrong places. We provide stable funding for jobs such as corrections workers and do not have stable jobs in community schools (a preventative measure). We expect youth to participate in these programs for nothing when they could continue to steal or prostitute and make money. Another problem with funding is that institutions such as the Paul Dojack Youth Centre have lots of funding. With no new funding and increased expectations for community resources and the YCJA, some community workers feel it is better that youth are in institutions because at least there they get school and activities.

Programs have to focus on employable skills to foster youth development. Beneficial programs have an educational, employment and/or cultural aspect. Programs should focus on Grades 6 to 10 because that is the period of time where youth get into trouble. Centralizing programs into one building can create harmony amongst community programs and be less confusing for clients. Evaluation criteria of programs should have youth input. Connecting to culture can provide for powerful healing, foster respect for Elders and give people a sense of their ancestry. A discussion began about having ceremonies in schools. While some people liked the idea, others were concerned about respect – now, Catholic prayers are not allowed in public schools. Maybe, doing these programs after school when the school is open to the community could be a way to get around this issue. If there was enough funding, community schools could stay open in the evening and provide much needed support for the high Aboriginal transient population. Gang, drug and sexual education should begin at the elementary level because gangs are recruiting youth at early ages. DART, based on the RCMP DARE program but for adults, has not been offered to all schools, only low risk schools. The program should be delivered in high-risk schools, as that is where a large portion of gang and drug activity happens. If these programs are not taught to youth early enough, they stop believing in the system. Youth grow up believing themselves to be inferior, lacking hope, with no food and fighting. To encourage a sense of accomplishment and connection to the community, there could be sports programs or youth involvement in neighbourhood watch programs. At this point, the large police presence in Japan was raised. There are unarmed police officers in every two square miles of the city who operate out of little booths. These officers know people and act like guardians who patrol the streets.

Another point raised was the lack of treatment centers. Youth are released from institutions into the same environments from which they came (family alcohol abuse problems, etc). To effectively stop offending, family treatment centers are necessary (see below). Sometimes, children only live in negative environments and cannot recognize that they are harmful and abnormal. To prevent children from living in harmful environments for too long distributed information and education in schools, daycare's and playgrounds can help children recognize harmful environments. Also, contact between stabilized and unstable youth would help.

The first step to reducing the high numbers of youth incarcerated is to find ways to ensure youth are never incarcerated in the first place. Deglamourizing youth views of "thug culture" through ex-gang member talks is a good first step. Stabilizing children so they can learn marketable skills is another good step. One participant suggested a new phrase, instead of youth-at-risk; a better idea would be youth-with-potential. Instilling pride in one's community could prevent vandalism. Alberta requires people to work or go to school to get social assistance. Instead, social workers here encourage people to have more children so they can get more social assistance. Youth should be involved in politics. The highest expense for many programs is the administration. Councils of youth and Elders can open the doors of communication to government.

4. Implementation Phase: Opportunities, Barriers and Possibilities:

Opportunities

- Safer communities where people can walk at any time of the day.
- More sports programs
- No need for day cares in bingo halls
- No Aboriginal over-representation in prisons
- Aboriginal over-representation in universities, technical institutes etc.
- Faster court case processing times
- Greater recognition of Aboriginal achievements
- Aboriginal communities looking after their own justice problems
- More role models for youth
- Funders ask programmers what they need
- No youth in jail
- Not enabling addictions
- Increased population in Saskatchewan

- **Barriers to the Future**
- Human apathy
- Conformity
- Too many chiefs, not enough Indians
- Bureaucracy
- Class
- Ourselves
- Money
- Community segregation
- Shift racism in the province to restore relationships between Aboriginal and non-Aboriginal people
- Not in my back yard syndrome
- Bureaucracy protecting itself
- Attitudes
- Fear of change
- Government with a different vision
- Vested interests
- Status quo
- Level of commitment
- Education (not learn right things)
- Changing demographics
- Public perception
- Community commitment
- Focus on the problems in Aboriginal communities instead of the strengths

Possibilities:

- Technology
    - enable communications on issues
    - level the economic playing field
- Capitalize on baby boomer retirement
- Learn from the youth justice forum pilot project (Prince Albert and Regina)
- Provincial and federal elections
    - Ask elected officials what the future means?
    - How will they reshape policies in anticipation of the changing demographics
    - They have a role to make Saskatchewan a place to stay
- Keep the lines of communication open
- Encourage champions to make change
- There are no effective lobby groups to force the government to take a step forward
- Revival and renaissance ideas for culture and community

SUMMARY OF GOVERNANCE & COMMUNITY DEVELOPMENT ROUNDTABLE

Commission Process:

On Tuesday, May 27, 2003 in Regina the Commission on First Nations and Metis Peoples and Justice Reform hosted a roundtable on Governance & Community Development. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations. An open discussion was held throughout the day.

General Information:

The purpose of the roundtable was to discuss the linkages between governments and community development. The last part of the day was spent discussing ideas for an implementation vehicle. Participants were posed the following questions:

1) Governance and Community Development
☐ What are they?
☐ How do they work together?
☐ How do you build a relationship between them?

2) Provide examples of where connections are being made and where communities are working to develop their own priorities.

3) Where do we go from here? How do we work with governments towards acceptance and respect for community development? I.e. respect towards other forms of knowledge beyond formal education.

4) Implementation Vehicle - How do we ensure that the recommendations will be implemented?

Main Themes:

Question 1: What is good government?

- Governance is the ability of individuals to affect the impact decisions have on their lives.
- Governments need to give community the control to do this because governments do not know the direction that community wants to go in. Aboriginal people have been excluded from these positions.
- Good governance requires knowledge and commitment. If good governance requires knowledge and commitment it is difficult to see how outside governments can govern Aboriginal communities well if they do not have knowledge about communities, and at times their commitment has been highly questionable.

- Good government also needs to be recognized as legitimate by the communities being governed. Again, this is not the case with Aboriginal communities. Government is seen as an obstacle to community development, as it has not always supported Aboriginal needs.
- Government funding for programs seems to be short term and then the community is left to find alternate funding or drop the program.
- For the government and communities to work together, there needs to be a sense of equality and listening on both sides.
- Governance and community development cannot be separated. In order to accomplish true development, governments need to relinquish paternalistic control.
- Developing respectful partnerships requires governments to stop hoarding power and to start to respect and trust communities.
- Governance and community development cannot be separated one from the other because community development is not possible in any positive way without governance.
- Governance is the ability of individuals to effect the decisions that impact on their own lives.
- Governance is about allowing communities to take control over determining what they need and then going about finding the means to realize those needs.
- Governments need to relinquish control to allow communities to find their own way, allowing them to possibly make mistakes, but to still respect the process and help if asked.
- The vision is communities having their own priorities, choosing what they are going to focus on, having the ability and the resources to be able to follow through on that.

Question 2: Examples of where connections are being made and where communities are working to develop their own priorities.

- Community Tripartite Agreements in Northern Saskatchewan
- involved community training
- minimal policy development
- communities determine priorities example: Community Development Corporation in La Loche
- many communities see the police as partners
- Aboriginal Youth Justice Committee
- New North

Question 3: Where do we go from here? How do we work with governments towards acceptance and respect for community development?

- There is a need for focus on priority setting. We have to realize that not all partners have access to equal resources whether it is in the form of financial or human resources.
- There is a need to work towards common understandings. For example, justice includes more than just the criminal justice system; you need to look at housing, jobs and education to name a few.
- Low-income home ownership programs, ten houses for ten families, makes for community building.

- There is a need for more coordination to make resources more accessible to communities. A community can be successful, that properly developed, properly empowered, community can succeed.
- Community keeps you accountable, there is too much time spent on reporting for accountability purposes. The funding structure itself is government's way of saying that they know more than community. The funding structure shapes how community approaches priority setting and problem solving, and the expertise does not necessarily lie with the group providing the funding.
- Governments need to come together and make their funding applications and budget cycles more congruent. At the community level there should be one form for accountability of the different programs so that more time can be spent on the program and not on the administration process.
- Communities should be allowed to integrate services as they see them fitting.
- There is a fear that the federal government will use the concept of "community development" to off-load their programs. In community development, partnerships need to be developed to facilitate mutual decision-making.
- Being sensitive to Aboriginal issues really translates into being aware about issues of power and control, and about how Aboriginal communities are marginalized in relation to sources of power and control.
- Aboriginal leadership must be willing to work with community, and willing to admit that there are problems. Along the same lines, communities have to be cautious about developing partnerships with governments that lead to dependence. Aboriginal communities need to identify and establish true partnerships and governments need to take on more of a facilitation role and not interfere.
- You need a leader or a Champion for Change in the community to push the vision.
- Governments themselves need to work more closely together.

Question 4: Implementation Vehicle

- The vehicle needs to be independent and objective.
- The vehicle needs to use performance indicators to ensure change is happening; yet it cannot simply be a measurement tool.
- The vehicle should also be proactive and something that will make government accountable. It is too easy to create the appearance of meeting quotas. Should be like the Children's Advocate to monitor progress and advocate on behalf of communities.
- Champions for Change - it is useless to write recommendations without having first identified those who will push implementation. This involves identifying institutions as being responsible for specific actions. This identification should by no means be limited to non-Aboriginal governments.
- In the past, implementation of commission's recommendations has been weak when it comes to actions.
- School^{Plus} is one such approach that strengthens families and communities.
- A shift in dollars is required to make sure that money makes it to the front lines.
- There is a political role in that politicians can keep pushing for change.

In Conclusion:

Where do you see the province in the future?

- In 20 years:
  - The income gap between Aboriginal and non-Aboriginal people could close.
  - Aboriginal ideas about justice will be a part of mainstream ideas about justice.
  - The level of violence in communities will drop, communities will be safe and beautiful.
  - First Nation governments will be advanced under Canadian jurisdiction free from domination.
  - Young families will be able to invest in their own homes and will be building communities and investing wealth into the economy.
  - In twenty years if everyone is employed, housed and self-sufficient, and if racism is defeated then justice will take care of itself.

Summary of Implementation Roundtable

Commission Process:

On Monday, June 2 and Tuesday, June 3, 2003 in Saskatoon the Commission on First Nations and Métis Peoples and Justice Reform hosted a roundtable on Implementation. In attendance were the Commissioners and staff plus invited guests from a wide range of service and government organizations and the Commission's Elder. An open discussion was held throughout the day.

General Information:

On the first evening, Winston McLean explained what the Commission had accomplished up to that point and its work plan for the rest of its existence. By the end of June, the Commission will have 90 per cent of its dialogues completed and will begin work on report development.

The next day there was a presentation by Wendy Whitecloud, who was a member of the Manitoba Implementation Commission, on implementation. Betty Ann Pottruff, a member of the Committee who implemented the Indian and Metis Justice Review Committee, also did a presentation on implementation and her experiences.

After that, individual tables examined four implementation models:
1. the educator,
2. the broker,
3. the advocate and
4. the watchdog.

Main Themes

1. Wendy Whitecloud Presentation

Wendy Whitecloud is Dakota, from the Sioux Valley nation. Although she is a veteran of the farm, she is urbanized now. She went to teacher's college (Normal School) after which she worked as a guidance counsellor. As a result of the Aboriginal deaths of J.J. Harper in Winnipeg and Helen Betty Osborne in The Pas, Manitoba, a reform Commission was appointed. When the Commission was finished, there was a change in government and the report was shelved – government copies of the report did not get opened for another ten years until the Implementation Commission was appointed. The NDP was re-elected in 1999, partially because it promised to implement that Commission's recommendations. The Implementation Commission asked for and received a six month extension beyond the original one year time limit. The Commission was to set priorities for policy initiatives and could not consider a separate justice system. All recommendations had to be practical, cost efficient, attainable and under the jurisdiction of the provincial government as the federal government refused to be involved.

First, Paul Chartrand, the other Commissioner, and Wendy Whitecloud met with government departments to find out what had been implemented already. The recommendation for better records of statistics had been implemented but it only showed that the rate of incarceration had gone up from 65 to 75-80 per cent of the prison population as Aboriginal. The rates for youth were even higher and 90 per cent of women in jail were Aboriginal. The same rise in incarceration rates for Aboriginal people is happening in Saskatchewan and will lead to serious problems.

The second step was prioritization of recommendations. The list of priorities was as follows: 1) police organization; 2) child welfare and the transfer of jurisdictions to Aboriginal organizations; 3) legislating the care of children under Aboriginal control; 4) northern flood agreement; 5) families and children; 6) probation. Discretion and diversion from the system were the main areas of concern.

The Commission tried to encourage a closer working relationship between Social Services and Corrections. Employment equity within the justice system was also a concern. While many communities suffered from "NIMBY" syndrome (not in my back yard), those communities also wanted to see an emphasis on community policing.

Communities wanted a different approach to domestic violence as zero tolerance meant more Aboriginal people were charged. Mediation and community justice initiatives had to overcome training needs as the government expected volunteers to carry out those initiatives.

Although the Commission recommended a permanent Implementation Commission to drive the government forward, this recommendation was mostly ignored. The government created an inter-departmental group with deputy ministers and ministers to deal with children's issues, which works well with all the Minister's at the table. There was no similar table for Aboriginal issues.

So far the NDP government in Manitoba has a good track record with northern Manitoba. It just has not done well with urban Aboriginal people and that is one reason why there are gangs.

Parenting classes are essential as many people are learning parenting as they go along. Cultural activities need to be outside of the jail system.

So far, the Manitoba government has not implemented many of the recommendations, although Wendy Whitecloud was not sure on this matter.

2. Betty Ann Pottruff Presentation

As a member of the Indian and Metis Justice Review Committee, Betty Ann Pottruff knows what is needed for implementation. Of the ninety recommendations, only four were not implemented.

The progress of the Committee was confined by its mandate – community driven initiatives, focussing on the doable and with existing community demand, resources and commitment to move forward. Relationships and commitment that use a shared dialogue are essential to implementation. Even though there may be different perspectives, trust and respect with principled debates create progress. The debates will result in something on which everyone can agree.

This committee relied heavily on multi/tripartite relationships. These take time because you must develop a trust relationship first and then move forward. They developed a steering committee with the FSIN, MN-S and government. This was a shared power process as the provincial and federal governments funded it but everyone was equal at the table. The government came to the table with mandates and policy frameworks. There were no set number of ideas. It was a wide-open discussion.

To move toward the goal of implementation, there were three steps: 1) priorities (funding); 2) building funds required for a shift to the new process; 3) five-year mandate for stability.

There were three key themes: 1) crime prevention and reduction; 2) building bridges; 3) employment equity and "race" relations.

To keep momentum going on a project of this proportion, everyone should be able to participate in the decision making and strong leadership. Then, partnerships build the process along with sustained commitment and funding.

Betty Ann Pottruff commented that there has not been good communication outside of the negotiation forums. The government should offer more public education on the successes and failures of the process. There is a risk that momentum and funding get side tracked. For example, the Committee lost $500,000 to the Leo LaChance inquiry.

It is also difficult to sustain relationships between government partners because of different funding cycles and changing mandates. If the right people are not at the table, then the implementation is more difficult.

There are certain steps to implementation such as structural supports, training and emotional supports. The process must be as simple as possible. The steps to creating the vision must be practical. The public has to understand the recommended changes in order to support the process.

Underneath all of this is the fact that spending decisions are made under the direction of cabinet. For an effective multi-party process, each party should share chairing the meetings. When developing criteria and the program, who gets status and should anyone have status?

A) What are Your Concerns about the Process?

- that the report will gather dust on a shelf
- ability to stay optimistic
- terms of reference from the government may be too restraining
- up coming provincial election

- there should be an economic analysis of costs now and in the future
- too many recommendations
- political and public will
- ability to build a trust relationship moving beyond police violence
- money into prevention
- having something to implement
- presence of strong voices to bring the government to task
- power constrained in the larger community context
- identifying a path to harmonious relationships
- engaging community
- abolishing the idea of war on crime
- loss of control locally
- implementation lost
- paternalism – not fitting government policy so not funding
- respect for community values
- jurisdiction, resources, length of funding
- partnerships
- political will and climate unknown
- intervention
- will there be buy-in at the senior level?
- power imbalances

B) What are some Examples of Successful Projects?

- success from whose perspective?
- safe communities
- strategy to recommendations
- tribal council programming
- family, community services are the beginning
- communicating with grass roots
- share territory
- RAMP, White Buffalo Youth Lodge (partnerships)
- healthy people
- time
- constant pushing from community
- leaders willing to take risks
- willingness to shift resources
- Metis and First Nations people as partners
- alternatives to jail
- the Alberta implementation of the Summit on Justice (not entirely successful but an example)
- child care center in Pinehouse
- Headstart, Kids First, home for apprehended youth
- community wants and needs
- family orientated activities
- Community development corporation in La Loche
- Alternative measures
- Day care centers (only four in northern Saskatchewan)
- Linn report

- tools to look after selves
- independent youth body find new road
- address issue of police
- support communities
- able, practical, flexible
- road map
- Champions for Change
- go public
- Northern Framework Agreement
- North Battleford Youth Center
- HEAT
- Urban Multi-purpose Youth Commission
- Courtworker program
- Hollow Water

C) What are your Suggestions for the Commission?

- treatment of people
- restore sense of justice
- legislated ombudsman from community
- partnerships
- create awareness
- look at other implementation models
- process to determine if person broke law very alienating
- convince technicians and bureaucrats
- legislate and negotiate to make permanent
- change attitudes
- tailor service to client needs
- who set the stage? Who controls the process? Community input and ownership
- health, education and economic development
- increase Aboriginal officers and cultural awareness training
- examine police officer's discretion
- the body should be legislated, independent from line departments
- accountable to the legisature
- Ombudsperson-like body accountable to community
- not be a program of the Department of Justice
- not a ghettoized body
- not a granting agency
- public relations is important as there has to be constant buy-in
- develop and maintain good relationships
    - develop linkages
    - traditional teachings
    - community development avoid reinventing the wheel
- promote change
- report to the legislature, identify progress, concerns and issues
- referral agency
    - monitor investigations
- build capacity
- avoid it being a single bullet vehicle

The Models – Pros, Cons and Interesting Analysis (PCI)

PCI analysis attempts to get as many ideas on the table as possible. It identifies the pros and cons of the concept before you. Each group examined the four possible models for the implementation vehicle using this analysis.

Vehicle One – Lobby Change – The Educator

Pros

- keep issues on the table and people talking about them
- knowledge empowers people
- build relationships
- collaborative change (lacks authority and instead works with the different interested parties for a solution)
- legislated access to information
- link up to existing services
- could be part of a long term change strategy
- it could be independent so the power of the public would be behind it showcase successes

Cons

- lack of authority
- access to information could be problematic because of that
- too narrow a focus
- no speaker's bureau (nobody attends those)
- can't act on the information it has

Interesting

- think exists already in various organizations
- what are you educating on?
- If you have to go to all parties to educate, that could be problematic

Vehicle Two – Facilitate Change – The Broker

Pros

- could be capacity building, develop businesses
- someone could call and the organization could give them strategies, an enabler
- person go to community, say what happen and the community could assist
- other people may know what is out there for resources
- sometimes, people do not know what question to ask
- build on what done before, not reinvent the wheel

Cons

- one more bureaucratic level
- needs to be community driven
- patriarchal
- too passive
- comes down to funding (lack of control over money, can't change)
- take away community empowerment
- lots agencies do this
- could take over political voice, Aboriginal ghettoizing

Interesting
- could find way around barriers
- assist and enable change
- money and jurisdiction – it would be solution focussed?
- give advocacy strategies
- exist already?
- doesn't address funding disparity
- can't facilitate change without an education role

Vehicle Three – Pressure Change – The Advocate

Pros
- create pressure
- inclusive
- meet senior officials

Cons
- need someone to represent the North
- could get off focus
- only conduct non-criminal investigations
- forget sense of partnership (adversarial)

Interesting
- cross-section of the community
- clarify parties
- voluntary participation?
- other bodies do that
- identify barriers to implementation
- should include municipal governments
- not use a "hammer" approach the first time

Vehicle Four – Explore Change – The Watchdog

Pros
- most authoritative
- can recommend to the legislature, treasury board
- consultative

Cons
- now welcoming
- heavy handed
- excludes community
- force least effective way to promote change

Interesting
- working committee terms of reference
- need advocate but community control
- consultative, inclusive group
- who drive this? Conduct independent investigations
- vehicle legislated
- affiliated existing or new department

SUMMARY OF BUSINESS/ECONOMIC ROUNDTABLE

Commission Process:

On Tuesday, September 9, 2003 in Saskatoon, the Commission on First Nations and Metis Peoples and Justice Reform hosted a roundtable with the business community. In attendance were the Commissioners and staff plus invited guests from a wide range of small and large businesses and government organizations. An open discussion was held throughout the day.

General Information:

The attendees were presented with the following questions:
1) What are your thoughts on the relationship between socio-economics and crime?
2) What is needed to start a business?
3) Presentation from Wayne McKenzie about the Aboriginal Employment Development Program.
4) Solutions
5) Implementation

Main Themes:

- Community development must involve economic development.
- Aboriginal communities are disproportionately dependent on social welfare income programs, and Aboriginal people are not included in the labour market the numbers that they should be.
- The lack of labour force participation amongst Aboriginal people was identified as being the result of lower education levels, geographical isolation, unfamiliarity with workplace culture, high drop out rates and preference for working for Aboriginal businesses or organizations.
- Also included as reasons for the lack of Aboriginal participation in the labour force were too many businesses/organizations paying lip-service to Aboriginal hiring, lack of employer and co-worker awareness of Aboriginal peoples, lack of the preparation of the workplace for Aboriginal people and racist or discriminatory hiring policies and/or practices.
- Aboriginal inclusion in the labour force is economically vital to Saskatchewan. In the next 5-10 years thousands of workers from all sectors in Saskatchewan will be retiring. Due to out-migration and low fertility rates, there will be a labour shortage. However, there has been a baby boom in the Aboriginal population in Saskatchewan that can make up for some of this.

1) Socio-economics and Crime

- There is a correlation between crime and low socio-economic status, hence the Commission's interest in this topic.
- Community development cannot happen independently from economic development.
- One example that was given was a comparison between Sandy Bay and Pinehouse. One community had more jobs than the other and was healthier than the other as a result. Due to automation, the jobs in the healthier

community were undercut. At the same time, industry started growing in the other community. As a result, the roles were reversed. The reason given for this was that self-sufficiency through employment allows people some freedom from worrying about basic needs, and allows for them to become more creative in community development endeavors.

In some Aboriginal communities, the majority of residents rely on social assistance income. Children growing up in these communities do not see future employment opportunities. In many communities, there is a lack of qualified teachers who can teach children math and science, and in others there is no complete Grade 12 programming.

Children in Aboriginal communities need to be properly prepared for the workforce, particularly with the labour shortage looming in the near future.

2) Barriers to Aboriginal Employment/Business Development

- The vast majority of businesses in Saskatchewan are very small (fewer than 10 employees) and as such, they have no human resources department and no long term planning. Employment projections and the need for Aboriginal inclusion are not even on the radar screen, particularly in a business climate where a large percentage of businesses fail.
- There is not a lot of job creation and a lot of competition for qualified candidates.
- Many jobs are filled through word of mouth. Only about 14 per cent are advertised publicly.
- In some cases, Aboriginal people have difficulty making the transition to being employed and are not successful. Part of this is also due to an unwelcome (perceived or actual) workplace; there are a lot of stereotypes about Aboriginal people. When Aboriginal employees "do not work out" businesses stop trying to include them because it seems like stereotypes are confirmed. This work transition is also evident in Aboriginal controlled and owned workplaces, but these workplaces will rehire when candidates are ready and do not give up trying to include Aboriginal employees because they are familiar with the issues. Eventually they are successful.
- Many non-Aboriginal workplaces are not prepared for Aboriginal employees, proper awareness training could help.
- Many Aboriginal candidates are skilled, but their skills are not formally credited and recognized. Some companies and educational institutions (SIAST) are doing prior learning assessments to properly assess the skills abilities of Aboriginal people.
- Aboriginal people, particularly in the North, have geographical/travel barriers and a lack of childcare services.
- It is very difficult to access capital to start a business, especially when you do not know where to start.
- There is not always a clear relationship between job openings and graduation numbers, since people filling positions are not always previously unemployed but searching for previous employment.

3. Presentation by Wayne McKenzie

Wayne McKenzie is a consultant with the Aboriginal Employment Development branch of Government Relations and Aboriginal Affairs for the Province of Saskatchewan. Mr. McKenzie discussed the Aboriginal Employment Development Program.

- The Aboriginal Employment Development Program involves the implementation of the Representative Workforce Strategy.
- The idea is to achieve a workforce where Aboriginal workers are represented at all levels of occupations in proportion to their numbers in the province's population.
- The idea of "selective access", including employment equity initiatives, is discouraged because it can be seen as a quota, does not reflect levels of position and can come with an informal ceiling.
- The statistics provided by the provincial government are very misleading. Aboriginal people tend to occupy positions that are temporary, term, seasonal, contract or casual.
- Aboriginal people do not participate in the labour market for a variety of reasons, and employers do not hire Aboriginal people for a variety of reasons.
- AEDP set out to understand what it was that was needed to rectify the situation in order to address the employment shortages.
- The strategy includes building partnerships with organizations to:
    - Assess Aboriginal workforce for training needs and potential;
    - Communicate learning needs and available opportunities to Aboriginal workforce;
    - Develop partnership agreements that involve the employer, unions, educational institutions and Aboriginal communities;
    - Identify barriers to Aboriginal employment and seek solutions to eliminate them;
    - Development of support networks for Aboriginal employees;
    - Develop a strategy with unions to overcome the employment barriers associated with seniority rights that interfere with Aboriginal hiring;
    - Implementation of a monitoring and evaluation process involving all parties.

Roles of partnership:
Employer

- Identify employment needs and opportunities;
- Establish linkages with the Aboriginal community;
- Address workplace barriers through cultural awareness training; and
- Hire qualified Aboriginal people.

Aboriginal Community:

- Focus training efforts;
- Pursue training opportunities; and
- Compete for jobs on an equal footing.

Government:

- Facilitate the partnerships;
- Ensure programs are contemporary to promote maximum advantage for Aboriginal people; and
- Communicate opportunities to the Aboriginal community.

Wayne McKenzie noted that there is a lot of talk about the changing demographics of Saskatchewan. He warned that people should quit talking about it if it is not going to show up in public policy i.e. Union, management and Aboriginal agreements.

4. Solutions and Proposals

- Barriers need to be clearly identified so that proper solutions can be found.
- Aboriginal employment needs to be improved at every level, not just entry-level positions.
- There is a need to work harder to attract Aboriginal candidates. Often, when qualified Aboriginal candidates are found, they are hard to retain as provincial or federal governments entice them away to higher paying positions. Unfortunately, these particular employees are put in positions that they are not experienced in or prepared for and have little opportunity for mobility.
- Employers have to compete with other employers for Aboriginal candidates. The federal and provincial governments recruit aggressively on campus.
- There is a need to partner with educational institutions to better attract Aboriginal candidates.
- There needs to be better education in the NAD, and a support system for northerners who go south to further their education.
- Opportunities need to be clearly communicated publicly instead of through word of mouth or personal relationships.
- There is a need for better access to childcare.
- There should be mining technician training available in Saskatchewan.
- Employment equity policies should target a minimum number of positions instead of a number that can be misinterpreted as a maximum.
- Unions should train Aboriginal members to sit at the table and have leadership roles. There needs to be public education about the union and what it does. Collective agreements need to contain Aboriginal-relative language.
- There should be on site job training.
- There should be a joint union/management committee on Aboriginal employment.
- The business of business is staying in business. Business needs to find a new way of doing things. Business needs to see that there are social and financial rewards, and needs to be accountable to the larger public.
- There needs to be career education in the classroom, and more energy needs to be focussed on the population bulge.
- We need to encourage succession planning.

5. Implementation

- Youth need to be involved in the search for solutions, they are capable of coming up with realistic and relevant solutions for themselves.
- Implementation needs to involve more than Aboriginal leadership and business, inclusion must be widened to a diverse group of stakeholders to avoid a political "us/them" situation.
- Business development needs to be included along with the issues of governance and community development.
- We need "bigots" to feel uncomfortable about the presence and inclusion on non-Aboriginal Champions for Change in the implementation process.
- People who are fairly high profile and who are potential role models/mentors must be included.
- Implementation must be based on partnership and co-operation as opposed to turf control. Work needs to be done in joint ventures because there are not enough resources to go around.

APPENDIX 6

TERMS OF REFERENCE

WHEREAS, it is desirable and in the public interest the Commission on First Nations and Métis Peoples and Justice Reform review the justice system with the intent of devising solutions to overcome systemic discriminatory practices and address attitudes based on racial or cultural prejudice;

AND WHEREAS, it is acknowledged this Commission shall not, in any way, be interpreted as an abrogation of Treaty or Aboriginal Rights;

AND WHEREAS, there shall be no negative financial effect arising from the creation of this commission to any existing First Nations and Métis justice programs and initiatives funded by the Government of Saskatchewan;

THEREFORE, the Commission on First Nations and Métis Peoples and Justice Reform is hereby charged to perform its duties and functions in accordance with the following Terms of Reference:

1. The Commission on First Nations and Métis Peoples and Justice Reform is mandated to hold hearings regarding reforms to the justice system that will:

   a) respond to justice-related issues of First Nations and Métis Peoples;

   b) include in its scope of consideration all components of the criminal justice system including, but not limited to: policing, courts, prosecutions, alternative measures, access to legal counsel, corrections including community corrections, youth justice, community justice processes, and victims services; and

   c) make reports to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation – Saskatchewan.

2. In the exercise of its mandate, the Commission on First Nations and Métis Peoples and Justice Reform shall:

   a) communicate with Saskatchewan's people, and particularly with First Nations and Métis Peoples, communities, organizations and governments as well as officials who are responsible for the management and operation of the justice system, for the purpose of generating reform proposals and setting priorities for action;

b) attend First Nations and Métis Peoples' communities to hear about the types of reforms that may be most useful in these communities;

c) hold hearings at times and places that it considers desirable and necessary;

d) analyze proposals in light of recommendations contained in previous justice reform initiatives such as the Saskatchewan Indian and Métis Review Committees, the FSIN Strategic Plan for First Nations Corrections, the Royal Commission on Aboriginal People and the Aboriginal Justice Inquiry of Manitoba, as well as researching existing literature regarding crime, victimization and other relevant factors;

e) identify efficient, effective and financially responsible reforms which would improve the administration of justice and would better reflect the values and inherent strengths of Aboriginal communities and promote positive inter-community and inter-disciplinary co-operation, leading to reduced offending, reduced victimization, reduced incarceration and safer communities for First Nations and Métis Peoples;

f) determine and provide solutions and recommendations for reforming the justice system, thereby ensuring the fair and equitable administration of justice for all people in Saskatchewan;

g) examine cultural issues within the administration of justice including the accommodation of Aboriginal languages, spirituality, family values, women's issues, social structures and respect and protection of traditional livelihood and ways of life; and

h) take into consideration the special fiduciary relationship, exemplified by the Royal Proclamation of 1763, Section 91(24) of the Constitution Act, 1867, and section 35(1) and Section 25 of the Constitution Act, 1982; as well as the constitutional relationship between Canada and the First Nations and Métis peoples with respect to Aboriginal and Treaty rights in the context of the administration of justice.

3. The Commission on First Nations and Métis Peoples and Justice Reform shall provide interim progress summaries every six months from the date of their appointment to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan.

4. The Commission on First Nations and Métis Peoples and Justice Reform shall provide their final report to the Government of Canada, the Government of Saskatchewan, the Federation of Saskatchewan Indian Nations and the Métis Nation - Saskatchewan within three years from the date of this order.

5. The Commission will recommend short and long-term implementation strategies and identify a vehicle to oversee the implementation of its recommendations.

APPENDIX 7

CRIME PREVENTION PROGRAMS

The following provides a list of crime prevention programs operating in Saskatchewan:

Provincial Crime Prevention

Regional Intersectoral Committees operating in 11 regions in the province
Human Services Integrated Forum, Complex Needs Initiative,
Kids First,
Urban Aboriginal Crime Prevention Committee,
Community schools
Community Police Boards
FASD education in schools

Community-Based Justice Programs

STC Safe House,
Saskatchewan Native Theatre,
Big Brothers,
Cadet programs,
Street Culture Kidz,
White Buffalo Youth centre,
Youth Activity Centre, Prince Albert, key is partnerships and youth driven
Operation Target – a multi agency response to prevention information
Red Feather Spirit Lodge – is a youth develop program that provides transition programming to youth aged 12 – 18 upon release from custody
Chimatawa Family Youth Program. A Cree word for 'building together' is a drop in program for youth an family
Operation Help – provides sex trade workers assistance to exit the streets
Maria's story – the wraparound project
Rosthern Successful Mothers program,
Saskatchewan Youth Services Model Pilot project: Communities Working Together for Youth,
CUMFI House,
Alter-Native for Non Violence

Federal Crime Prevention

National Crime Prevention Centre
RCMP tripartite community police boards,
Head start,
HRDC homelessness initiative

CRIMINAL CODE PROVISIONS RELATING TO ALTERNATE MEASURES

Sections 716 & 717

The Criminal Code of Canada

PART XXIII
SENTENCING

Interpretation

716. In this Part,

"accused" includes a defendant;

"alternative measures" means measures other than judicial proceedings under this Act used to deal with a person who is eighteen years of age or over and alleged to have committed an offence;

"court" means

(a) a superior court of criminal jurisdiction,

(b) a court of criminal jurisdiction,

(c) a justice or provincial court judge acting as a summary conviction court under Part XXVII, or

(d) a court that hears an appeal;

"fine" includes a pecuniary penalty or other sum of money, but does not include restitution.

R.S., 1985, c. C-46, s. 716; R.S., 1985, c. 27 (1st Supp.), s. 154; 1995, c. 22, s. 6; 1999, c. 5, s. 29(E).

Alternative Measures

717. (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

(a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;

(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;

(c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;

(d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;

(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;

(f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

(2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have any charge against the person dealt with by the court.

(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings.

(4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,

(a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and

(b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.

(5) Subject to subsection (4), nothing in this section shall be construed as preventing any person from laying an information, obtaining the issue or confirmation of any process, or proceeding with the prosecution of any offence, in accordance with law.

R.S., 1985, c. C-46, s. 717; 1995, c. 22, s. 6.

717.1 Sections 717.2 to 717.4 apply only in respect of persons who have been dealt with by alternative measures, regardless of the degree of their compliance with the terms and conditions of the alternative measures.

1995, c. 22, s. 6.

717.2 **(1)** A record relating to any offence alleged to have been committed by a person, including the original or a copy of any fingerprints or photographs of the person, may be kept by any police force responsible for, or participating in, the investigation of the offence.

(2) A peace officer may disclose to any person any information in a record kept pursuant to this section that it is necessary to disclose in the conduct of the investigation of an offence.

(3) A peace officer may disclose to an insurance company any information in a record kept pursuant to this section for the purpose of investigating any claim arising out of an offence committed or alleged to have been committed by the person to whom the record relates.

1995, c. 22, s. 6.

717.3 (1) A department or agency of any government in Canada may keep records containing information obtained by the department or agency

(a) for the purposes of an investigation of an offence alleged to have been committed by a person;

(b) for use in proceedings against a person under this Act; or

(c) as a result of the use of alternative measures to deal with a person.

(2) Any person or organization may keep records containing information obtained by the person or organization as a result of the use of alternative measures to deal with a person alleged to have committed an offence.

1995, c. 22, s. 6.

717.4 (1) Any record that is kept pursuant to section 717.2 or 717.3 may be made available to

(a) any judge or court for any purpose relating to proceedings relating to offences committed or alleged to have been committed by the person to whom the record relates;

(b) any peace officer

(i) for the purpose of investigating any offence that the person is suspected on reasonable grounds of having committed, or in respect of which the person has been arrested or charged, or

(ii) for any purpose related to the administration of the case to which the record relates;

(c) any member of a department or agency of a government in Canada, or any agent thereof, that is

(i) engaged in the administration of alternative measures in respect of the person, or

(ii) preparing a report in respect of the person pursuant to this Act; or

(d) any other person who is deemed, or any person within a class of persons that is deemed, by a judge of a court to have a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that the disclosure is

(i) desirable in the public interest for research or statistical purposes, or

(ii) desirable in the interest of the proper administration of justice.

(2) Where a record is made available for inspection to any person under subparagraph (1)(d)(i), that person may subsequently disclose information contained in the record, but may not disclose the information in any form that would reasonably be expected to identify the person to whom it relates.

(3) Any person to whom a record is authorized to be made available under this section may be given any information contained in the record and may be given a copy of any part of the record.

(4) Nothing in this section authorizes the introduction into evidence of any part of a record that would not otherwise be admissible in evidence.

(5) A record kept pursuant to section 717.2 or 717.3 may not be introduced into evidence, except for the purposes set out in paragraph 721(3)(c), more than two years after the end of the period for which the person agreed to participate in the alternative measures.

1995, c. 22, s. 6.

APPENDIX 9

YOUTH CRIMINAL JUSTICE ACT PROVISIONS RELATING TO ALTERNATE MEASURES

Section 10

Extrajudicial sanctions

10. (1) An extrajudicial sanction may be used to deal with a young person alleged to have committed an offence only if the young person cannot be adequately dealt with by a warning, caution or referral mentioned in section 6, 7 or 8 because of the seriousness of the offence, the nature and number of previous offences committed by the young person or any other aggravating circumstances.

(2) An extrajudicial sanction may be used only if

(a) it is part of a program of sanctions that may be authorized by the Attorney General or authorized by a person, or a member of a class of persons, designated by the lieutenant governor in council of the province;

(b) the person who is considering whether to use the extrajudicial sanction is satisfied that it would be appropriate, having regard to the needs of the young person and the interests of society;

(c) the young person, having been informed of the extrajudicial sanction, fully and freely consents to be subject to it;

(d) the young person has, before consenting to be subject to the extrajudicial sanction, been advised of his or her right to be represented by counsel and been given a reasonable opportunity to consult with counsel;

(e) the young person accepts responsibility for the act or omission that forms the basis of the offence that he or she is alleged to have committed;

(f) there is, in the opinion of the Attorney General, sufficient evidence to proceed with the prosecution of the offence; and

(g) the prosecution of the offence is not in any way barred at law.

(3) An extrajudicial sanction may not be used in respect of a young person who

(a) denies participation or involvement in the commission of the offence; or

(b) expresses the wish to have the charge dealt with by a youth justice court.

(4) Any admission, confession or statement accepting responsibility for a given act or omission that is made by a young person as a condition of being dealt with by extrajudicial measures is inadmissible in evidence against any young person in civil or criminal proceedings.

(5) The use of an extrajudicial sanction in respect of a young person alleged to have committed an offence is not a bar to judicial proceedings under this Act, but if a charge is laid against the young person in respect of the offence,

(a) the youth justice court shall dismiss the charge if it is satisfied on a balance of probabilities that the young person has totally complied with the terms and conditions of the extrajudicial sanction; and

(b) the youth justice court may dismiss the charge if it is satisfied on a balance of probabilities that the young person has partially complied with the terms and conditions of the extrajudicial sanction and if, in the opinion of the court, prosecution of the charge would be unfair having regard to the circumstances and the young person's performance with respect to the extrajudicial sanction.

(6) Subject to subsection (5) and section 24 (private prosecutions only with consent of Attorney General), nothing in this section shall be construed as preventing any person from laying an information or indictment, obtaining the issue or confirmation of any process or proceeding with the prosecution of any offence in accordance with law.

APPENDIX 10

SELECTED CRIMINAL CODE PROVISIONS RELATING TO SENTENCING

Sections 718 and 742

The Criminal Code of Canada

PART XXIII
SENTENCING

Purpose and Principles of Sentencing

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.

Fundamental principle

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,

(ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95; 2001, c. 32, s. 44(F), c. 41, s. 20.

Punishment Generally

718.3 (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

(3) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not

specified in the enactment that prescribes the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of imprisonment that is prescribed in respect of the offence.

(4) The court or youth justice court that sentences an accused may direct that the terms of imprisonment that are imposed by the court or the youth justice court or that result from the operation of subsection 734(4) or 743.5(1) or (2) shall be served consecutively, when

(a) the accused is sentenced while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;

(b) the accused is found guilty or convicted of an offence punishable with both a fine and imprisonment and both are imposed;

(c) the accused is found guilty or convicted of more than one offence, and

(i) more than one fine is imposed,

(ii) terms of imprisonment for the respective offences are imposed, or

(iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence; or

(d) subsection 743.5(1) or (2) applies.

1995, c. 22, s. 6; 1997, c. 18, s. 141; 2002, c. 1, s. 182.

Conditional Sentence of Imprisonment

742. In sections 742.1 to 742.7,

"change", in relation to optional conditions, includes deletions and additions;

"optional conditions" means the conditions referred to in subsection 742.3(2);

"supervisor" means a person designated by the Attorney General, either by name or by title of office, as a supervisor for the purposes of sections 742.1 to 742.7.

R.S., 1985, c. C-46, s. 742; R.S., 1985, c. 27 (1st Supp.), s. 165; 1992, c. 11, s. 15; 1995, c. 22, s. 6.

742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

1992, c. 11, s. 16; 1995, c. 19, s. 38, c. 22, s. 6; 1997, c. 18, s. 107.1.

APPENDIX 11

CORRECTIONS AND CONDITIONAL RELEASE ACT PROVISIONS RELATING TO ABORIGINAL OFFENDERS

Sections 79 to 84

PART I
Institutional and Community Corrections

Definitions

79. In sections 80 to 84,

"aboriginal" means Indian, Inuit or Métis;

"aboriginal community" means a first nation, tribal council, band, community, organization or other group with a predominantly aboriginal leadership;

"correctional services" means services or programs for offenders, including their care and custody.

Programs

80. Without limiting the generality of section 76, the Service shall provide programs designed particularly to address the needs of aboriginal offenders.

Agreements

81. (1) The Minister, or a person authorized by the Minister, may enter into an agreement with an aboriginal community for the provision of correctional services to aboriginal offenders and for payment by the Minister, or by a person authorized by the Minister, in respect of the provision of those services.

(2) Notwithstanding subsection (1), an agreement entered into under that subsection may provide for the provision of correctional services to a non-aboriginal offender.

(3) In accordance with any agreement entered into under subsection (1), the Commissioner may transfer an offender to the care and custody of an aboriginal community, with the consent of the offender and of the aboriginal community.
1992, c. 20, s. 81; 1995, c. 42, s. 21(F).

Advisory Committees

82. (1) The Service shall establish a National Aboriginal Advisory Committee, and may establish regional and local aboriginal advisory committees, which shall provide advice to the Service on the provision of correctional services to aboriginal offenders.

(2) For the purpose of carrying out their function under subsection (1), all committees shall consult regularly with aboriginal communities and other appropriate persons with knowledge of aboriginal matters.

Spiritual Leaders and Elders

83. (1) For greater certainty, aboriginal spirituality and aboriginal spiritual leaders and elders have the same status as other religions and other religious leaders.

(2) The Service shall take all reasonable steps to make available to aboriginal inmates the services of an aboriginal spiritual leader or elder after consultation with
(*a*) the National Aboriginal Advisory Committee mentioned in section 82; and
(*b*) the appropriate regional and local aboriginal advisory committees, if such committees have been established pursuant to that section.

Parole Plans

84. Where an inmate who is applying for parole has expressed an interest in being released to an aboriginal community, the Service shall, if the inmate consents, give the aboriginal community
(*a*) adequate notice of the inmate's parole application; and
(*b*) an opportunity to propose a plan for the inmate's release to, and integration into, the aboriginal community.

Plans with Respect to Long-term Supervision

84.1 Where an offender who is required to be supervised by a long-term supervision order has expressed an interest in being supervised in an aboriginal community, the Service shall, if the offender consents, give the aboriginal community
(*a*) adequate notice of the order; and
(*b*) an opportunity to propose a plan for the offender's release on supervision, and integration, into the aboriginal community.
1997, c. 17, s. 15.

APPENDIX 12

CONVENTION ON THE RIGHTS OF THE CHILD (CRC), ARTICLE 27

1. States parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parents or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

4. States parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 28, SECTION 1

1. States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available free to all;

   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

   (d) Make educational and vocational information and guidance available and accessible to all children;

   (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

APPENDIX 13

SAMPLE PLAN OF A CHILD AND YOUTH ACTION PLAN

The Child and Youth Action Plan should include the following:

Returning justice to the community

To return justice to the community there must be a reduction in the use of incarceration and thus a transferring of authority and resources to support programs in the community.

1.1 Youth and community must engage in a discussion of the present social policy that criminalizes youth rather than healing and nurturing their development.

1.2 Focusing on restorative justice responses to anti-social behaviour outside of the criminal justice system strengthens youth.

1.3 All governments provide assistance to communities to establish programs that promote rehabilitation, and reintegration of young offenders.

2. Developing youth leadership

Recognizing that youth are the best agents for delivering positive change to other youth.

2.1 First Nations and Metis children and youth must be consulted in the identification of issues, the development and delivery of services to youth.

2.2 Peer mentoring programs must be developed.

Ensuring youth voice in governance

Recognizing that youth want to be included and want to have a voice in matters that concern them and their communities, leaders must provide youth with opportunities for youth to be involved in governance.

3.1 Leadership must provide assistance to communities to establish programs that promote youth development and leadership.

3.2 Youth positions must be created on boards such as police boards, school boards and boards that provide services are provided to youth.

3.3 Youth networks must be developed to enhance the capacity of youth through exchanges of experiences and information between youth, especially those living on-reserve and those requiring protection from violence, in particular young women.

3.4 The proposed Institute on Traditional Law and Governance must be involved.

Strengthening families and parenting skills

Recognizing the impact the child welfare system has on many children, effort must be made to strengthen family and develop parenting skills. Any attempts at reducing the number of children coming into care must be accompanied with respite services and child care services for youthful parents and parents of disabled children.

4.1 Youthful parents must be consulted to determine what services they require and that the supports necessary for them to parent their children are provided.

4.2 Parenting skills that involve Elders must be developed.

4.3 "Safe" houses, on and off-reserve, must be established for children and youth where they are able to stay on short notice and for short stays, without the fear of being apprehended by the system.

4.4 Cooperative parenting centres must be established where children and their parents are able to learn parenting skills and contribute to the well-being of others.

Engaging youth in schools

Recognizing that zero tolerance policies in schools foster intolerance of diversity and that youth value education, creativity and flexibility is required to engage students disconnected with school.

5.1 Curriculum must be developed for legal literacy at an early age.

5.2 Pro-social behavior instruction including conflict resolution to avoid the criminalization of students must be introduced in schools.

5.3 School^{Plus} should consult youth to assist in finding ways of assisting attendance and providing relevant educational instruction, i.e. mandatory parenting 30 classes across Saskatchewan.

5.4 Schools must include physical education, sport and physical activities for all students.

Enhancing youth employment

Recognizing the change in demographics, that training and programs to cultivate and develop First Nations and Metis youth labour potential is developed and implemented.

6.1 Credited learning and training opportunities must be created for youth outside the mainstream school system.

6.2 Business should be engaged in developing work placement and training opportunities that address the growing unemployed and unskilled labour force.

Promoting arts, sport, culture and recreation

Recognizing that participation in arts, sport, culture and recreation provides opportunities for pro-social development to youth.

7.1 Arts, sport, culture and recreation must be a core component of all services to children and youth.

7.2 Direction and resources should be provided to develop, in schools, supervised physical activity, sport and recreation programming offered outside of school hours including weekends, especially in areas where there are identified 'at-risk' youth.

Developing cultural learning opportunities

Recognizing that an opportunity to learn cultural practices and traditions from Elders has a positive effect on children and youth.

8.1 Opportunities for Elder-youth cultural learning must be created.

Providing Integrated services

Recognizing that youth requiring services have difficulty accessing services.

9.1 Services to youth must be provided by one integrated service worker per youth to coordinate services in one location familiar to youth.

Providing accessible addictions services

Recognizing that services must be 'accessible' to children and youth.

10.1 In the short term, the waiting lists for addiction services must be eliminated and a 24-hour service for children and youth be created.

10.2 In the longer term youth should be involved in the design and implementation of a long term action plan to address youth addictions that includes prevention, early intervention and a continuum of care delivered in the community.

10.3 An awareness campaign to address youth sexual health, practices and the prevention of teen pregnancy as it relates to addictions must be created.

Providing mental health services for children and youth

Recognizing that there are many children and youth who may have mental health needs that are not being served and may be incarcerated as a result.

11.1 A community based mental health services plan for children and youth, outside of the youth justice system, must be developed and implemented.

Providing a targeted focused prevention strategy

Recognizing that prevention reduces victimization, a risk focused prevention strategy with active involvement of youth, family and community is required.

12.1 At-risk' youth, including youth affected by FASD, those witnessing violence, girls subjected to violence and youth affected with addictions and involved in gangs must receive targeted attention.

Providing 'meaningful' justice

Recognizing that youth must be provided with meaningful justice, and for justice to be meaningful to youth it must be timely.

13.1 All youth charges not dealt with in six months from the date the charge is laid should be dismissed.

Reducing reliance on incarceration

Recognizing the spirit and intent of the *Youth Criminal Justice Act* and the resulting reduction in youth incarceration, the long term target is to reduce incarceration levels to be representative of populations.

14.1 In the short term, incarceration levels should be reduced to 50 per cent of the pre-YCJA level by March 31, 2005. This can only be accomplished if present facilities resources are redistributed to community based programs that address addictions, education, and skill development.

Reintegrating youth to community

Recognizing that youth will be released and returning to their communities.

15.1 Corrections and Public Safety must establish a reintegration plan that promotes the youth's reintegration back into community.

15.2 This reintegration should begin the moment the youth is sentenced to custody.

15.3 Intake assessments must focus not only on 'risks' but also on the strengths and hopes of the youth.

15.4 Addiction assessments and programming to address youth addictions should be offered in young offender facilities. Most addictions programming requires more time to be effective than the length of the current youth sentences, therefore it is vital that a case manager create a treatment program that begins in the facility but involves community and that a continuum of service is provided.

Improving youth-police relations

Recognizing that youth value police and want to be treated with respect and dignity.

16.1 Police services establish an Aboriginal civilian liaison presence to provide youth with an advocate to assist with respectful treatment between police and youth.

16.2 Police must engage in a dialogue with First Nations and Metis youth to develop an understanding of youth and create youth specific programs that promote a positive relationship between youth and police services.

Creating positive images of youth

Recognizing that the images of youth provided in the media contribute to how society sees youth.

17.1 The Saskatchewan media should dialogue with youth and implement a positive imaging campaign that celebrates youth successes and achievements.

Improving quality of life

Recognizing that over half of First Nations and Metis children and youth live in urban environments.

18.1 'Quality of life' indicators of the urban First Nations and Metis child must be established, and that action is taken to improve them.

18.2 These indicators should become one measure of the success of the Saskatchewan First Nations and Metis Children and Youth Action Plan.

18.3 In recognition of the mobility of youth from the Reserve to the city and from the Far North to urban centres, youth transition/urban orientation programs in urban centres should be established to assist in successful transition.

18.4 The value of urban youth centres must be recognized and funded.

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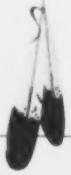

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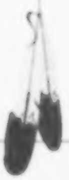

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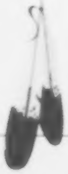

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